In the High Court of New Zealand

I te Kōti Matua O Aotearoa

Tamaki Makaurau Rohe

CIV-2021-404-000248

Under the Judicial Review Procedure Act 2016

In the matter of an application for Judicial Review

Between **Kelly Alexandra Roe**

Applicant

And **Auckland District Health Board**

Respondent

INTERLOCUTORY APPLICATION ON NOTICE

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8 December 2021

Kelly Roe (applicant)

To the Registrar of the High Court at Auckland

and

To the Auckland District Health Board

This document notifies you that –

1. The applicant, Kelly Alexandra Roe, will on 8 December 2021 apply to the High Court of Auckland for permission for leave to be granted such that I may have a case heard on appeal.

2. Ms Roe initiated Judicial Review of Administrative Action against the Auckland District Health Board. The statement of claim included the following assertions:

    1. The [ADHB] involuntarily detained the applicant in the Grafton Hospital in September of 2020 in violation of her right to refuse to undergo medical treatment (Part 2, Section 11).

    2. The [ADHB] involuntarily medicated the applicant in the Grafton hospital in September of 2020 in violation of her right to refuse to undergo medical treatment (Part 2, Section 11)...

3. The Auckland District Health Board filed a motion to have the proceedings struck out. The motion to have proceedings struck out was the matter that the High Court chose to progress to a 2 hour hearing.

4. Justice Wylie found[1]

[1] Roe v Auckland District Health Board [2021] NZHC 1780 [15 July 2021] Judgment of Wylie J [Strike out application].

> [33] ... it is unclear from the clinical records who the responsible clinician was and what medical treatment he or she directed... Further, whether or not Ms Roe's stay in hospital between 7-9 September 2020 was voluntary is uncertain... There is also a reference to the ADHB's ''lock down'' policies..
>
> [34] In these circumstances, in my view, it is not appropriate to strike out the proceedings at this point...
>
> [35] Accordingly, I decline to strike out the proceedings.

5. Justice Wylie continued, in that same Judgment to rule on costs:

> [36] The ADHB has substantially succeeded in its application even though the proceedings have not been struck out. It was forced to proceed with the application because Ms Roe refused to file an amended statement of claim...
>
> [37] In my judgment, the ADHB is entitled to its reasonable costs and disbursements of an incidental to the application.

6. The Costs Judgment followed[2]

> [2] The ADHB has filed a memorandum seeking costs on a 2B basis in the sum of $5,616.50.
>
> [4] I have considered the costs claimed by the ADHB. Insofar as I can glean from the file, the costs claim is accurate and properly reflects work undertaken, calculated on a 2B basis.
>
> [5] Accordingly, I award costs in favour of the ADHB and against Ms Roe, in the sum of $5,616.50.

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[2] Roe v Auckland District Health Board [2021] NZHC 2162 [18 August 2021] Judgment of Wylie J [Costs].

The grounds for appeal.

7. In the matter of the ADHB filing a motion to have proceedings struck out, it seems to me that the ADHB was unsuccessful. They applied to have the proceedings struck out – and the proceedings were not struck out.

8. After the two-hour motion to strike out hearing the matter was, substantively, the same as it was prior to the hearing. That is to say, the court was still refusing to progress Ms Roe's filings, as they were, to a substantive hearing on the matter, and was instead insisting that she re-file her filings.

9. Ms Roe is forced to self-represent because she cannot find a legal aid lawyer willing to help her with this case. Ms Roe seeks Justice or teeth or consequences for the ADHB having forced her to stay in the hospital without grounds (unlawful detention) and forcing her to take psycho-active substances (drugging her) against her will (there is no evidence that she was prescribed anything at all by a medical doctor or psychiatrist but nursing notes attest to her drugging).

10. That is to say the ADHB took an unnecessary step in filing the motion to have proceedings struck out.

11. It is usual for costs to be awarded to the substantively correct party to the proceedings. Ms Roe maintains that in the matter of the ADHB filing that proceedings should be struck out, she is the substantively correct party, since proceedings were not struck out.
12. The ADHB has chosen to require Ms Roe to take this issue to the courts to seek Justice. They have not been willing to meet with Ms Roe or address any of her concerns in-house or within. They require an external agency or authority to look into this because they simply won't do it. They are denying wrongdoing and they intentionally withheld the notes and so on. This is part of present day Lake Alice how we presently currently treat people in the health system today in New Zealand.

They chose to hire a QC to defend themselves instead of working with me to help make things better so that what happened to me doesn't happen to anybody else. Apparently there are more people wanting psychiatry help in New Zealand than we are able to treat. Still, they choose to spend their time unlawfully detaining and drugging me. This is not psychiatry and that is not a hospital.

13. It is manifestly unjust to award costs against Ms Roe for having brought this issue to the courts. It is denying Ms Roe justice to not allow her legal representation and force her to do this herself as an unrepresented litigant.

14. The High Court Rules *14.2 Principles applying to determination of costs states (1) The following general principles apply to the determination of costs: (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds.*

15. It seems to Ms Roe that she is the successful party in the matter of motion to have proceedings struck out.

16. Ms Roe was having trouble understanding why the costs judgment was made against her, so swiftly. That is to say, Ms Roe was wondering why Wylie J found costs against Ms Roe in the matter of motion to have proceedings struck out, rather than leaving the costs issue until after a substantive hearing of the case.

17. In *Roe v University of Auckland* in the first case management conference (audio transcript) there were two Justices present in the court-room. One of them advised the University's counsel not to file a motion to have proceedings struck out as the most expeditious way of having the matter dealt with (in Judicial Review of Administrative Action) would be for the case to swiftly proceed or progress to a substantive hearing on the major claims. As such, the University's counsel did not file a motion to have proceedings struck out.

18. In *Roe v University of Otago* costs are presently being worked out but the University has billed for motion to have proceedings struck out (and that was filed for), though

it did not proceed to substantive hearing (and neither did Ms Roe's request for summary judgment on part of her claim).

19. This case is much harder for Ms Roe than the other cases (and the other cases have been plenty hard and Ms Roe hasn't had any success with the courts, as yet, except for a reduction in the costs awarded against her for being technically correct on some point (in *Roe v University of Auckland* Fitzgerald J found Ms Roe to be correct that the source of authority for 'eligibility' for Domestic Adults was the Education Act - and not up to the discretion of the University Council).
20. This case involves breech of the Privacy Act, rather than the Official Information Act (as Ms Roe wrongly supposed). It involves issues around the Mental Health Act (the duties of the District Inspector and the Area Director) and since the role of the Area Director is clearly provided for in Legislation Ms Roe understands, now, that insofar as she is naming particular individuals who are responsible for under-staffing the hospitals the Area Director is the person to name rather than the Chief Executive of the Hospital. This is all very difficult, though. It effectively denies Justice to Ms Roe and to New Zealanders that the Government won't pay lawyers to sort these things out and that they pay these people to not do their jobs or to only do their jobs badly or to only take all the money out for themselves so there's no money left to hire competent staff and / or let competent staff do their job.

21. Ms Roe has found that the Judiciary is having trouble awarding costs to lawyers who have succeeded in litigation, even, and therefore there are particular problems associated with awarding costs to Ms Roe who is self-represented, but also not a lawyer. Ms Roe hasn't passed (or sat) any kind of bar exam or competency test or check on her filings or how she handles herself in court[3]. The foreign stuff on costs supposes that people have access to lawyers. Ms Roe has asked the courts for an amicus curiae on a couple occasions and that has been denied to her. She was informed verbally in the first case management conference of *Roe v University of Waikato* that she could not obtain a lawyer in that way.

[3] https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/lay-litigants-costs-consultation/

22. If Ms Roe had have been awarded costs in her favour (If she had have been awarded a few thousand dollars for having succeeded in a motion to have proceedings struck out) then she would have had some money to pay a lawyer. The courts appear to be denying Ms Roe Justice. Legal Aid listed lawyers (civil) will not do the case. They always claim 'conflict' or 'too busy'. The whole thing looks like a front or a sham. A bit like the 'hospital'.

23. Rule 14.2 Principles applying to determination of costs. (1) The following general principles apply to the determination of costs: (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds'.

24. The ADHB failed to have the proceedings struck out as the result of a 2 hour hearing they subjected Ms Roe to. They failed. So Ms Roe should be awarded costs. This seems fair. It would dis-incentivise or dis-suade them from handling other complaints by their choosing to hire a QC so the complainant has to listen to 2 hours of how they are vexatious etc. With no lawyer or representation or advocacy, even.

25. Ms Roe understands that the High Court is bound by precedent of the Higher Courts. I don't know that there is any precedent for costs to be awarded to (rather than against) a self-represented (non lawyer) litigant. But this seems to be the simplest or most straightforward thing that has happened in the courts where Ms Roe is substantively correct about something, or some aspect of the case. So costs should be awarded to her. The fact that they haven't been (were awarded against her quickly rather than even holding off until things were settled up at the conclusion of the High Court substantive hearing on the matter) means that Ms Roe feels like the courts are basically indicating to her that NZ is not rule by law at all and there will not be any justice for anybody, really, it seems, in NZ, at all. This really doesn't seem fair at all in any sense or way or manner at all.