

IN THE SUPREME COURT OF NEW ZEALAND

SC 19/2014  
[2014] NZSC 72

BETWEEN RAZDAN RAFIQ  
Applicant

AND THE CHIEF EXECUTIVE OF THE  
MINISTRY OF BUSINESS,  
INNOVATION AND EMPLOYMENT  
First Respondent

THE COMMISSIONER OF THE NEW  
ZEALAND POLICE  
Second Respondent

SC 40/2014

BETWEEN RAZDAN RAFIQ  
Applicant

AND THE PRIVACY COMMISSIONER  
Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person  
S M Kinsler for Respondents in SC 19/2014  
K E Evans for Respondent in SC 40/2014

Judgment: 16 June 2014

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**JUDGMENT OF THE COURT**

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**The applications for leave to appeal are dismissed.**

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## REASONS

[1] In these two applications, the applicant, Mr Rafiq, seeks leave to appeal against two decisions of Harrison J upholding decisions by the Registrar of the Court of Appeal requiring Mr Rafiq to pay security for costs on two appeals.<sup>1</sup>

[2] The background to the two appeals is as follows:

- (a) As to the appeal involving the Chief Executive of the Ministry of Business, Innovation and Employment, Mr Rafiq was convicted in the District Court of two charges under the Postal Services Act 1998 and one charge under the Harassment Act 1997.<sup>2</sup> On appeal to the High Court, his conviction under the Harassment Act was quashed but his appeal in respect of the Postal Act charges was dismissed.<sup>3</sup> Mr Rafiq then issued a proceeding styled as an application for judicial review against the Chief Executive and the Commissioner of Police, which put in issue actions taken by the police in the course of dealing with the offences. Both the Chief Executive and the Commissioner applied to strike the proceeding out. Venning J granted the Chief Executive's application, on the basis that the Chief Executive was not mentioned in the body of the statement of claim filed by Mr Rafiq, nor was any relief sought against him.<sup>4</sup> Venning J also struck out the claims against the Commissioner but gave Mr Rafiq leave to file, by a specified date, an amended statement of claim restricted to an alleged assault when he was arrested by the police. Mr Rafiq did file a further statement of claim, to which the Commissioner has filed a statement of defence, but also filed an appeal against Venning J's decision, which gave rise to one of Harrison J's decisions.

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<sup>1</sup> *Rafiq v Chief Executive of the Ministry of Business Innovation and Employment* [2014] NZCA 4 and *Rafiq v The Privacy Commissioner* [2014] NZCA 137.

<sup>2</sup> *Police v Rafiq (aka) Khan* DC Auckland CRI-2011-004-14731, 3 September 2012.

<sup>3</sup> *Rafiq v Police* [2012] NZHC 2884.

<sup>4</sup> *Rafiq v Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 3138.

- (b) The appeal in relation to the Privacy Commissioner concerns an unsuccessful application by Mr Rafiq to commence proceedings against the Commissioner out of time. Mr Rafiq wishes to sue the Commissioner in defamation on the basis of a letter written by a staff member at the conclusion of the investigation of a complaint to the Commissioner by Mr Rafiq. Mr Rafiq sought leave to issue proceedings out of time under s 4(B) of the Limitation Act 1950. In declining leave, Lang J noted that Mr Rafiq had not explained his delay in issuing proceedings but declined leave because he considered that the Privacy Commissioner was protected from suit by s 96(4) of the Privacy Act 1993, which confers the same protection as a court enjoys on the Commissioner in respect of “anything said ... in the course of any inquiry”.<sup>5</sup> Mr Rafiq then filed an appeal against this decision, which gave rise to the other of Harrison J’s decisions.

The final point to note is that Mr Rafiq was adjudicated bankrupt on 1 August 2013.

[3] At issue in the proposed appeals is the question of security for costs in the Court of Appeal. The principles applicable to dispensing with security for costs in that Court were addressed by this Court in *Reekie v Attorney-General*.<sup>6</sup> Accordingly, neither of the proposed appeals raises any issue of general or public importance.

[4] On the question whether there has been a possible substantial miscarriage of justice, we note that Harrison J said that he saw no merits or prospect of success in the appeals. Having considered the High Court judgments and Mr Rafiq’s submissions, we see no appearance of a substantial miscarriage and accordingly decline to grant leave to appeal. We make no order for costs.

Solicitors:  
Crown Law Office, Wellington for Respondents in SC 19/2014

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<sup>5</sup> *Rafiq v The Privacy Commissioner* [2014] NZHC 325.

<sup>6</sup> *Reekie v Attorney-General* [2014] NZSC 63.