

**IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

**CIV 2009-409-000488**

BETWEEN                      BRUCE STUART-MENTEATH  
   Plaintiff

AND                              THE REGISTRAR OF PRIVATE  
   INVESTIGATORS AND SECURITY  
   GUARDS  
   First Defendant

AND                              PROVISION SECURITY LIMITED  
   Second Defendant

Hearing:            28 July 2009

Appearances: Plaintiff In Person  
                         G Galloway for Second Defendant (Given leave to withdraw)  
                         P J Gunn as Amicus Curiae

Judgment:        29 July 2009

---

**JUDGMENT OF FOGARTY J**

---

[1] Mr Stuart-Menteath made a complaint to the Registrar of Private Investigators and Security Guards alleging breaches of the Private Investigators and Security Guards Act 1974 regarding the provision of security for Solid Energy Limited at its Stockton Coal Mine. Not being a member of the police he had no right to make a complaint. However, under s 53(2) of the Act a written complaint can be filed with the leave of the Registrar. Section 53(2) and (3) provide:

**53        Complaints against licensee**

...

- (2) Any person other than a member of the Police may at any time, with the leave of the Registrar, file a written complaint with him against any licensee.

- (3) The Registrar shall refuse leave under subsection (2) of this section unless he is satisfied that the complainant has a personal interest in the subject-matter of the complaint, and that the complaint is made in good faith and is not frivolous or vexatious.

...

[2] The Registrar decided to hear the complaint. There were a number of requests for adjournment by the plaintiff so that he could obtain information that he requested should be released and provided to him. Finally, on 19 December, he received a notice of hearing from the Registrar stating:

The above matter is now to be heard at:  
10.00 am. on Friday the 22<sup>nd</sup> February 2008, at  
Christchurch District Court – Courtroom 7  
85 Armagh Street. Christchurch.

(That was in large print)

In lower print but in bold was the following note:

**Note - 3 days have been set aside for the hearing of this and other PISG matters from 20 – 22/2/2008 – it may be that if the PISG fixture set down on 20 & 21/2/2008 shortens in length of hearing you will be contacted to bring the hearing of your matter forward**

[3] The plaintiff made another request for an adjournment on 3 February which was turned down on 18 February. The plaintiff was advised by email that his request for an adjournment of the hearing:

... scheduled for Friday 22<sup>nd</sup> February 2008 at 10am

Had been considered by the Registrar and declined.

[4] On 21 February the Registrar dismissed the complaint on the grounds that his witnesses were available and in the absence of any explanation from Mr Stuart-Menteath as to his unavailability it is appropriate that his complaint be dismissed.

[5] This was principally because Mr Stuart-Menteath had declined to agree to start his case at midday on Thursday, 21 February.

[6] The Registrar relied on the note to the notice and what the Registrar considered to be Mr Stuart-Menteath's "*acceptance of the fixture dates as notified to him on 3 February 2008*" (note the use of the plural).

[7] The Registrar relied on a letter Mr Stuart-Menteath had written on 19 December (the same day the notice was issued, and therefore written before the notice was issued) where Mr Stuart-Menteath said:

Further to a phone conversation today with Steven McHugh [who is the manager of Occupational Licensing in Auckland District Court] I understand that a date for hearing into my complaint is tentatively possible between 20 and 23 February 2008. I would be agreeable to this date, ...

[8] As I have already noted Mr Stuart-Menteath sought an adjournment of the fixture which was declined.

[9] Mr Stuart-Menteath in this application for judicial review seeks the decision dismissing his complaint and the subsequent decision awarding costs against him to be set aside on numerous grounds, but principally they resolve into two:

1. That the Registrar had no power to dismiss the complaint on 21 February;
2. And even if he did have that power he exercised it in breach of natural justice.

[10] The second defendant has not taken advantage of the opportunity to defend the decision of the Registrar. Rather, it abides, notifying protection of its rights under r 5.50. In order for there to be a contradictor this Court appointed an amicus curiae. Mr Gunn appeared in that role. Mr Gunn filed very thorough written submissions, none of which supported the Registrar's decisions, either on the dismissal of the complaint or on the subsequent costs award. I confirmed with Mr Gunn that had he thought there were any grounds for justifying the decisions of the Registrar he would have advanced them.

[11] The key statutory provision dealing with the power of the Registrar upon the hearing of the complaint is s 56 which I set out in its entirety:

**56 Hearing of complaint**

- (1) Where a complaint has been filed with the Registrar against any licensee under section 53 of this Act, and the Registrar is satisfied that the requirements of that section have been complied with, the Registrar shall fix a time and place for the hearing of the complaint.
- (2) The Registrar shall give not less than 14 days' notice of the hearing—
  - (a) To the licensee; and
  - (b) To the complainant; and
  - (c) Where the Registrar wishes the Police to attend, to the Commissioner of Police.
- (3) At the hearing, the complainant, the licensee, and the Commissioner of Police or any other member of the Police on his behalf, shall be entitled to appear and to be heard, and to call evidence, and to cross-examine and re-examine witnesses.
- (4) Any party at the hearing may conduct his case personally or may be represented by counsel.
- (5) The Registrar may from time to time adjourn the hearing to a future time and place fixed by him.

[12] It can be seen that subss (1) and (2) combined require not less than 14 days notice of a time and place for the hearing of the complaint. The time naturally includes an hour of the day as well as the date. Specific time and date was given, 10 am on 22 February.

[13] The note following that time does not fix any other time but signals that the hearing may be brought forward. There is no provision in s 56 enabling the Registrar to require that flexibility on the part of complainants, the licensee or the police.

[14] To be sure, the Registrar could have given the date of hearing of 10 am on Friday, 22 February, with a note that the parties to that complaint might be invited to

bring the hearing of the matter on earlier during the period in which the Registrar is sitting.

[15] There are good reasons why litigants should know the time, date and place of a hearing well in advance. This is because of the natural difficulty in setting aside from ordinary daily activities time to appear at Court and arranging for other persons also to appear. In this case there were at least two witnesses, appearing at that time.

[16] In my view it is quite clear that the Registrar had no power to dismiss the complaint on 21 February. For he could not rely upon the “Note” to the notified time of hearing.

[17] In any event, any power to dismiss a complaint intended by Parliament to be given a hearing, has to be exercised consistent with the principles of natural justice. I deal with this issue as it was an independent ground of review advanced both by the plaintiff and the amicus.

[18] Mr Stuart-Menteath was called at approximately 9.30 am on Thursday, 21 February, by the Christchurch District Court Registrar, Ms Andrea McDonald. She told him she understood he had been advised that the hearing of his complaint was to be brought forward to 12 pm that day and she wanted to confirm that. He informed her he had received no such advice and regardless he was unavailable as he had a prior commitment he could not put aside.

[19] It seems that the matter had been discussed between the Registrar and counsel for the second defendant the day before, and with a Mr Marinovich, one of the witnesses Mr Stuart-Menteath intended to call who was at an earlier hearing as a witness. Mr Marinovich had been asked by both the Registrar and counsel for the second defendant to contact him, but he had not done so.

[20] Mr Marinovich told Mr Stuart-Menteath that he did not do so as he felt it was professionally inappropriate for him to do so.

[21] Later that morning Ms McDonald phoned back Mr Stuart-Menteath saying that nonetheless the hearing would be held at 12 pm and that if he did not attend his complaint would be dismissed. Mr Stuart-Menteath again told her that there was nothing that he could do to attend that day, that he was engaged on another commitment, that he could not contact his witnesses, and expressed concern at being given such a short notice for the hearing. Ms McDonald then relied on the note attached to the notice of hearing. There was then to and fro in the conversation whereby Ms McDonald relied on the note and Mr Stuart-Menteath relied on the email three days previously confirming the hearing would proceed at 10 am on 22 February.

[22] After that phone call Mr Stuart-Menteath attempted to contact his three witnesses. He reached Mr Marinovich but he could not get to the other two.

[23] The other commitment he had that morning was that he was completing flooring work in a property belonging to his wife which was due to have an open day on Saturday morning, 23 February.

[24] Later in the afternoon of Thursday, 21 February, Ms McDonald phoned again and advised his wife the complaint had been dismissed.

[25] It needs to be kept in mind at this point in the analysis that Mr Stuart-Menteath was a lay litigant without the benefit of counsel. Had he had counsel, counsel would normally have gone down to the hearing and protested at a midday start, probably successfully.

[26] There are numerous decisions by the Courts wherein the Courts advise that when an adjudicator is dealing with a litigant in person particular care must be taken in relation to giving that litigant adequate notice of the hearing and of the consequences if the lay litigant does not turn up in time, and prepared.

[27] In this case the reaction of Mr Stuart-Menteath was a mixture of stubbornness and practicality.

[28] Plainly, at the time the complaint was dismissed the Registrar did appreciate that not all of his witnesses were available. He must have been told that by Ms McDonald. The Registrar, however, was of the view that he could have started his case and that Mr Marinovich at least would have been able to be called as a witness after him. But fundamentally there was no allowance by the Registrar for the fact that Mr Stuart-Menteath was given two and a half hours notice of a new fixture time within which he would be required to drop what he was doing, contact his witnesses, complete his preparation for the hearing and actually appear.

[29] The reasoning of the Registrar was predicated both on the fact that there had been a note qualifying the time of hearing, as set out above, and that there was no evidence that Mr Stuart-Menteath was involved in any emergency type situation. The relevant reasoning in this aspect is as follows:

According to my advice from the [Christchurch] Registrar, Mr Stuart-Menteath advised he would not attend as notified. He said he was not advised of the fact that the fixture might be brought forward. He said he had other commitments although he did not specify what they were. There was no indication from him that he was involved in an emergency type situation, such as perhaps a medical or family emergency, and no indication was given by him as to why he could not attend as requested, save that he had unspecified commitments.

Mr Darroch, for Provision Security Limited, is ready to proceed. His witnesses are available and in the absence of any explanation from Mr Stuart-Menteath as to his unavailability it is appropriate, in my view, for his complaint to be dismissed. It is his complaint after all. He has initiated the process. The licensee company, the subject of his complaint is ready to proceed. Mr Stuart-Menteath chooses not to attend.

In these circumstances there is no basis for any further adjournment of the hearing and his complaint is dismissed accordingly.

[30] This reasoning also needs to be read in the context that the Registrar has already given leave for this complaint to be brought, and so knows that it is a bona fide complaint that is not vexatious.

[31] I am satisfied that in the circumstances the Registrar was not treating the applicant fairly and reasonably on 21 February. This was mainly because the Registrar was in error of law as to the status of the note to the notified time of hearing. The appropriate decision of the Registrar and indeed the only legal decision

the Registrar could have made on 21 February was to accept the unreadiness of Mr Stuart-Menteath to start earlier and to adjourn his hearing until 10 am the next morning.

[32] The Registrar's oral decision of 21 February directed that:

... Application for costs to be filed and served within 14 days. Any response to be filed and served within 14 days thereafter.

[33] However, the first document he received was a submission from the complainant opposing any order for costs. He arranged for the Court Registrar to forward those submissions to counsel for the licensee who then filed a submission for costs. By oversight that submission was not served on the applicant. He did not give Mr Stuart-Menteath an opportunity to reply to those submissions.

[34] The Registrar went on to award costs in favour of Provision Security Limited on 7 April in the sum of \$1,500. It is not necessary to go further into the detail of the facts to decide whether in the circumstances it was a breach of natural justice, as the last decision's fate follows that of the dismissal decision.

[35] For these reasons this Court now quashes both the decision of 21 February dismissing the complaint and the consequent decision of 7 April awarding costs.

[36] Accordingly, the outcome of this case is that the plaintiff's complaint still stands. The Registrar will need to set a new time and place for hearing of the complaint.

[37] Costs are reserved.

Solicitors:  
Crown Law, Wellington, for Defendants