IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2022] NZEmpC 149
EMPC 381/2021

IN THE MATTER OF	an application for judicial review
AND IN THE MATTER OF	an application to strike out proceedings
BETWEEN	ALLAN GEOFFREY HALSE Applicant
AND	EMPLOYMENT RELATIONS AUTHORITY First Respondent
AND	BAY OF PLENTY DISTRICT HEALTH BOARD Second Respondent
AND	CULTURESAFE NZ LIMITED Third Respondent
AND	ANA SHAW Fourth Respondent

Hearing:	11 March 2022 (Heard at Auckland)
Appearances:	Applicant in person M Beech and A Pearce, counsel for second respondent
Judgment:	18 August 2022

JUDGMENT OF JUDGE KATHRYN BECK
(Application to strike out judicial review)

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[1] This judgment deals with an application brought by the second respondent, Bay of Plenty District Health Board (the DHB), to strike out the application for judicial review brought by the applicant, Allan Halse.

Background

[2] On 27 March 2015, Ana Shaw was dismissed by the DHB. She subsequently filed a statement of problem in the Employment Relations Authority. In the statement of problem, she claimed that she had been unjustifiably disadvantaged and dismissed. These claims have been resolved.[1]

[3] While seeking to resolve her dispute, Ms Shaw was represented by Mr Halse. His behaviour during those proceedings led to the Authority making a number of directions. Mr Halse seeks judicial review of the directions, and the DHB has applied to strike out his application for review. The substance of the challenged directions is set out below.

[4] On 23 May 2017, Mr Beech, counsel for the DHB, filed a memorandum in the Authority. The memorandum stated that Mr Halse had directly contacted the Chief Operating Officer of the DHB via LinkedIn rather than via the DHB's lawyers. Further, it was stated that Mr Halse's communications contained veiled threats towards the DHB. Reference was also made to criticisms made by the CultureSafe Facebook page against the DHB.[2] As a result, the Authority directed Mr Halse not to communicate directly with the DHB (Direction 1):[3]

> [14] While the DHB is represented by Counsel, Mr Halse is not to make contact with the DHB. Further, I will view very seriously any conduct which undermines the Authority's investigation in this matter.

[5] Subsequently, Ms Goodspeed, junior counsel for the DHB, filed a memorandum which stated that Mr Halse had again communicated directly with the DHB. Reference was again also made to comments made on the CultureSafe Facebook page. As a result, on 23 March 2018, the Authority issued further directions against Mr Halse (Direction 2):[4]

> [16] Mr Halse is directed to comply with the Authority's direction of 23 May 2017.
> ...

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1 *Shaw v Bay of Plenty District Health Board* [2022] NZEmpC 10; and *Shaw v Bay of Plenty District Health Board* [2022] NZCA 241.
2 *Bay of Plenty District Health Board v CultureSafe NZ Ltd* [2020] NZEmpC 149 at [10]–[14].
3 *Shaw v Bay of Plenty District Health Board* NZERA Auckland 5593008, 23 May 2017.
4 *Shaw v Bay of Plenty District Health Board* NZERA Auckland 5593008, 23 March 2018.

> [18] Mr Halse is directed not to make any public comment regarding the BOPDHB and its staff on his Facebook page whilst the Authority's investigation is ongoing.

[6] Despite these directions from the Authority, the CultureSafe Facebook page continued to publish posts referring to the DHB. Mr Halse advised the Authority that CultureSafe would not be taking its Facebook posts down.[5] The DHB subsequently sought ex-parte orders against him. On 3 December 2018, the Authority required that notice be given to Mr Halse and issued interim directions against him (Direction 3):[6]

> [12] The Authority ... makes the following directions on an interim basis, until further direction or order of the Authority.
>
> [13] Mr Halse is to comply with the directions of the Authority as follows:
>
> (a) The direction of the Authority on 23 May 2017 that while the DHB is represented by counsel, Mr Halse is not to make contact with the DHB.
>
> (b) The direction of the Authority dated 23 March 2018 that Mr Halse is not to make any public comment regarding the BOP DHB and its staff on his Facebook page whilst the Authority's investigation is ongoing.
>
> (c) The direction at the close of the Authority's investigation meeting on 5 October 2018 that the matter between the parties remains *sub judice* pending the Authority's determination and that no public comments were to made in respect of it by the parties.
>
> [14] Ms Shaw is to comply with the directions of the Authority in para [13] of this direction.
>
> [15] Mr Halse is to immediately take down the Facebook posts on CultureSafe's website commenting on the DHB in respect of the Authority's current investigation in to Ms Shaw's claims.
>
> [16] Ms Shaw is to immediately take down the posts on her Facebook page regarding the Authority's current investigation in to her claims against the DHB.
>
> [17] The above directions are to be complied with immediately by the parties pursuant to s 160(1)(f) of the Act.

[7] After making these directions, the Authority issued a determination on Ms Shaw's substantive claim on 7 December 2018.[7] Unsurprisingly, the matter did not

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5 *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* above n 2, at [30].
6 *Shaw v Bay of Plenty District Health Board* NZERA Auckland 5593008, 3 December 2018.
7 *Shaw v Bay of Plenty District Health Board* [2018] NZERA Auckland 390.

end there. The DHB made an application against CultureSafe NZ Ltd, Mr Halse, and Ms Shaw for penalty, take-down and contempt orders. However, on 25 February 2019, the Authority decided to remove this new application to the Court to be dealt with at the same time as the challenge to the Authority's substantive determination given the complexity of some of the issues. The Authority stated (the removal determination):[8]

> [14] The grounds for removal under s 178 of the Act have been made out. The application is removed in its entirety to the Employment Court for determination.

[8] Mr Halse has now made an application for judicial review of all three directions and the removal determination. He submitted that the Authority did not have jurisdiction to make the directions or remove the matter to the Court. The DHB has applied to strike out Mr Halse's application.

The issues

[9] The following issues are raised by the DHB's strike-out application:

(a) Are the first three directions judicially reviewable?

(b) Is the removal determination judicially reviewable?

(c) Is the judicial review application an abuse of process?

(d) Is the judicial review application vexatious?

Submissions for the DHB

[10] Mr Beech, on behalf of the DHB, submitted that Mr Halse's application for judicial review against Directions 1, 2 and 3 is barred by s 184(2) of the Employment Relations Act 2000 (the Act) because the applications for review are not challenges to decisions for lack of jurisdiction. He submitted that *Samuels v Employment Relations Authority* was incorrectly decided and that judicial review on natural justice grounds is not available.[9]

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8 *Bay of Plenty District Health Board v CultureSafe NZ Ltd* [2019] NZERA 101.
9 *Samuels v Employment Relations Authority* [2018] NZEmpC 138, [2018] ERNZ 406.

[11] Mr Beech also submitted that the removal determination cannot be judicially reviewed because Mr Halse has not yet challenged the determination and that a challenge is therefore barred under ss 184(1A) and 194(3) of the Act.

[12] In addition, Mr Beech also submitted that the proceedings should be struck out for being vexatious. He submitted that the DHB has been required to deal with a multitude of proceedings relating to the same matter, which have been largely unsuccessful. He says that these matters should be brought to an end.

[13] Finally, the DHB says the proceedings constitute an abuse of process. It says that the Court has already heard and determined the question of whether the Authority had the jurisdiction to make Directions 1, 2 and 3.

Submissions for Mr Halse

[14] In respect of Mr Beech's first point, Mr Halse submitted that *Samuels* is not relevant here because the issue is not how a power was exercised but rather whether a power existed to make the directions. He submitted the issue is truly jurisdictional as the Court is being asked to assess whether the Authority has jurisdiction to make orders suspending the fundamental rights and freedoms of a party or of a non-party.

[15] In respect of Mr Beech's submission that the removal determination cannot be reviewed until it has been challenged, Mr Halse submitted firstly that s 179 requires a challenge "if applicable" and that it is not applicable here. Secondly, he submitted that he was not a party to the substantive matter, so s 179 could not apply to him. However, Mr Halse also appears to acknowledge that the proceedings dealt with in the removal determination had different parties to the substantive proceedings.

[16] In respect of Mr Beech's assertion that the proceedings are vexatious, Mr Halse stated that although the proceedings may vex the DHB, they are not vexatious. Further, he submitted that the DHB needing to deal with a multitude of matters is a situation of its own making, not a result of Mr Halse's actions, and that it is a result of their decision to bring proceedings against him, CultureSafe and Ms Shaw.

[17] In respect of Mr Beech's assertion that the proceedings are an abuse of process, Mr Halse submitted that the doctrine of res judicata cannot apply where the previous decision relied on was made per incuriam.[10] He also submitted that Judge Corkill's previous decision on jurisdiction dealt with "whether Member Fitzgibbon could make directions, rather than whether they were lawful and enforceable".

The law

[18] Rule 15.1 of the High Court Rules 2016 sets out the situations where the Court may strike out proceedings. It applies to the Court via reg 6 of the Employment Court Regulations 2000.[11] It 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.

[19] The Court of Appeal has stated that it could "see no reason for the Employment Court to approach strike-out applications on any basis other than that applying to the High Court".[12] Therefore, if the DHB's strike-out application is to succeed, it must show that the judicial review application falls foul of one or more of these provisions.

[20] The criteria for striking out for no reasonably arguable cause of action under r 15.1(1)(a) was summarised by the Court of Appeal in *Attorney-General v Prince*:[13]

> ... It is well settled that before the Court may strike out proceedings the causes of action must be so clearly untenable that they cannot possibly succeed ... the jurisdiction is one to be exercised sparingly, and only in a clear case where the Court is satisfied it has the requisite material ... but the fact that applications to strike out raise difficult questions of law, and require extensive argument does not exclude jurisdiction ...

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10 Through lack of care. A decision of a court is made per incuriam if it fails to apply a relevant statutory provision or ignores a binding precedent.

11 *New Zealand Fire Service Commission v New Zealand Professional Firefighters' Union Inc* [2005] ERNZ 1053 (CA) at [13]; and *Malcolm v Chief Executive of the Department of Corrections* [2022] NZEmpC 39 at [64].

12 *New Zealand Fire Service Commission,* above n 11, at [13].

13 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) at 267.

[21] The Supreme Court stated similarly in *Couch v Attorney-General*:[14]

> [33] It is inappropriate to strike out a claim summarily unless the court can be certain that it cannot succeed. The case must be "so certainly or clearly bad" that it should be precluded from going forward. Particular care is required in areas where the law is confused or developing.

[22] Courts have also considered what principles are applicable when assessing whether pleadings are vexatious. The Court of Appeal held in *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* that vexatious proceedings contain "an element of impropriety".[15] The Supreme Court stated similarly in *Reekie v Attorney-General*:[16]

> An appeal, or its conduct, may be vexatious even though it raises some issues which are arguable. Vexatiousness might be manifested, for instance, by the unreasonable and tendentious conduct of litigation, extreme claims made against other people involved in the case or perhaps a history of unsuccessful proceedings and unmet costs orders.

[23] The Court of Appeal also considered the definition of the term "vexatious proceedings" in the context of the now repealed Judicature Act 1908, which allowed the High Court to declare someone 'vexatious'.[17] Mr Beech refers to the Court of Appeal's judgment in *Heenan v Attorney-General*; however, some care needs to be taken with that decision because the Court's analysis of whether proceedings are vexatious is mixed with its analysis of whether those vexatious proceedings are brought persistently.[18] However, a Full Bench of the High Court in that case helpfully set out some features borne by vexatious proceedings:[19]

> ... a deeply entrenched pattern of behaviour characterised by a refusal to accept adverse decisions; extravagant and baseless allegations against a wide range of people including judicial officers; an abject failure to comply with the rules of Court; the filing of prolix and confusing pleadings; and a failure to recognise any distinction between pleadings, evidence and submissions.

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14 *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].
15 *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89].
16 *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 (SC) at [39].
17 Judicature Act 1908, s 88B.
18 *Heenan v Attorney-General* [2011] NZAR 200 (CA).
19 *Attorney-General v Heenan* [2009] NZAR 763 (HC) at [138]; upheld by the Court of Appeal in *Attorney-General v Heenan,* above n 18.

[24] Finally, a pleading is an abuse of process if it amounts to an attempt to substantially relitigate a determined matter.[20]

Issue one: Are the first three directions judicially reviewable?

[25] Mr Beech submitted that Mr Halse's judicial review applications against Directions 1, 2, and 3 should be struck out because the application falls outside the limited scope of the Employment Court's review jurisdiction under ss 184 and 194 of the Act. In making this submission, Mr Beech emphasises that s 184 only allows the Court to review a decision of the Authority on the grounds of lack of jurisdiction.

[26] He submitted that *Samuels* was wrongly decided or, at least, could be distinguished, and that it dealt with a situation where the Authority had not given an advocate an opportunity to be heard on the issue of costs. He submitted that was an issue relating to the procedure of the Authority whereas the present case deals with an issue of whether the Authority had jurisdiction to make an order.

[27] Mr Halse submitted that *Samuels* is not relevant to the issues in this case because natural justice is not the question here. He submitted that the issue is not "how" the orders were made but rather "that" they were made. Further, he submitted that the Authority's error was truly jurisdictional because the Authority does not have jurisdiction to suspend the fundamental rights and freedoms of either party.

[28] I do not consider that *Samuels* is engaged here given that both parties agree that natural justice is not the primary issue.

[29] Mr Halse's submission is that the Authority did not have jurisdiction to make an order. The basis for this submission is not entirely clear, but it appears that his case may rest on a submission that the Authority's jurisdiction is limited by the rights contained in the New Zealand Bill of Rights Act 1990.

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[20] *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 541; *Bryant v Collector of Customs* [1984] 1 NZLR 280 (CA) at 282; *Link Technology 2000 Ltd v Attorney-General* [2006] 1 NZLR 1 (CA); and *Marphona Trustees Ltd v NYX Ltd* [2022] NZHC 792.

[30] While the argument is not strong given s 4 of the New Zealand Bill of Rights Act and the specific wording of ss 184 and 194, I consider it would be premature to strike out Mr Halse's applications on this ground.

Issue two: The removal determination

Failure to challenge under s 179

[31] Mr Beech submitted that the removal determination cannot be judicially reviewed because it has not yet been challenged.

[32] Section 194 of the Act provides that any person may seek judicial review of the Authority. However, this right is subject to s 184(1A), which states:

> (1A) No review proceedings under section 194 may be initiated in relation to any matter before the Authority unless—
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> (a) the Authority has issued a determination under section 174A(2), 174B(2), 174C(3), or 174D(2) (as the case may be) on all matters relating to the subject of the review application between the parties to the matter; and
>
> (b) (if applicable) the party initiating the review proceedings has challenged the determination under section 179; and
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> (c) the court has made a decision on the challenge under section 183.

[33] In the present circumstances, the Authority removed the matter to the Court, so s 184(1A)(a) is not in issue. On the other hand, Mr Halse has not challenged the removal determination and the Court has therefore not made a decision on any challenge, so s 184(1A)(b) and (c) prima facie restrict Mr Halse from bringing review proceedings.

[34] Mr Halse submitted that he did not need to challenge the removal determination before bringing proceedings because a challenge only needs to be brought "if applicable" under s 184(1A)(b). He submitted that he did not challenge the Authority's removal determination, so it was not applicable.

[35] In response, Mr Beech submitted that Mr Halse has misinterpreted the words "if applicable". He cites *Keys v Flight Centre (NZ) Ltd* where a full Court held that "if applicable" means if a right of challenge exists.[21]

[36] In that decision, the Court held:

> [50] ... we consider that the phrase "if applicable" means if a right of challenge (appeal) exists. As will be seen, there are some decisions of the Authority that may be unchallengeable. The statute provides that, if the Authority's determination is challengeable, any challenge to it must be disposed of before even the very limited power of judicial review can be exercised.

[37] The Court of Appeal made similar observations in *Employment Relations Authority v Rawlings*:[22]

> [35] In s 184(1A)(b), the words "if applicable" mean that the requirement to challenge the determination applies only if there is a right to issue challenge proceedings.
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> [36] When construed in this way, the purpose of the subsection is clear. It is to prevent review proceedings being filed until the Authority is quit of the case and any rights of challenge have been exercised. In virtually every case, the challenge procedure (especially where it proceeds de novo) can be expected to tidy up the sort of problems which might otherwise have warranted review.

[38] In light of these decisions, Mr Beech submitted that if Mr Halse was able to challenge the removal determination under s 179, his submission in relation to "if applicable" must be rejected.

[39] Mr Halse also submitted that he could not challenge the removal determination under s 179 because he was not a party for the purposes of s 179. He submitted that he could not have been a party because the Authority only has jurisdiction to deal with employment matters, and he was never an employee of the DHB. I do not accept this argument. Mr Halse was named as a party in the Authority proceedings which were removed to the Court. He clearly had standing as a party for the purposes of s 179.

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21 *Keys v Flight Centre (NZ) Ltd* [2005] ERNZ 471 (EmpC) at [50].
22 *Employment Relations Authority v Rawlings* [2008] NZCA 15, [2008] ERNZ 26 at [35].

[40] However, despite being a party, I consider that the issue of whether Mr Halse was able to challenge the removal determination under s 179 is not straightforward because it is arguable that s 178(5) prevents parties from bringing a challenge under s 179 in relation to the removal of proceedings.[23] This was not an issue discussed by either party, but given the caution required when dealing with a strikeout application, I consider that the argument in relation to s 179 would require further investigation and so does not provide a basis for strike-out.

Power to remove is clear under s 178

[41] Finally, in oral submissions Mr Beech submitted that the removal determination cannot be reviewed because the power to remove a matter to the Court clearly exists under s 178. Mr Beech suggested that Mr Halse's claim for review was frivolous; however, I consider it more appropriate to look at this issue through the lens of whether Mr Halse's judicial review application in respect of the removal determination has identified a reasonably arguable cause of action.

[42] In his application for judicial review, Mr Halse submitted that the Authority did not have jurisdiction to consider the application against him which was removed to the Court; therefore, because the Authority could not have considered the matter, it also did not have jurisdiction to remove the matter. In his oral submissions against the strike-out application, Mr Halse further submitted that there was no application to be removed.

[43] I do not accept these submissions. The Authority has a clear and express power to remove proceedings of its own motion under s 178. It removed the proceeding to the Court because it acknowledged that the Authority's jurisdiction in respect of the matter was in issue and sought guidance from the Court on that point.[24] That is entirely consistent with the purpose of s 178. Until it is determined that the Authority did not have jurisdiction to consider the DHB's application against Mr Halse, the Court cannot

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23 *Johnston v Fletcher Construction Co Ltd* [2017] NZEmpC 157, [2017] ERNZ 894 at [43]–[51]; *Kazemi v Rightway Ltd* [2018] NZEmpC 3 at [3]–[6]; *Air New Zealand Ltd v Kerr* [2013] NZEmpC 114 at [6] and [8]; *Rightway Ltd v Burwell* [2018] NZEmpC 125; and *Kennedy v Chief Executive of Oranga Tamariki – Ministry for Children* [2021] NZEmpC 38.

24 *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* above n 8, at [13].

conclude that there was nothing to remove because the application still involved live issues. It is clear there was an extant removable application before the Authority.

[44] Further, Judge Corkill has already held that the Court has jurisdiction to hear the removed matter.[25]

[45] Overall, it is clear that Mr Halse's claim cannot succeed. This is not an area where the law is confused or developing. Mr Halse's judicial review application has not identified a reasonably arguable cause of action in relation to the removal determination of 25 February 2019 and should be struck out.

Issue three: Are the proceedings an abuse of process?

[46] Mr Beech submitted that Mr Halse's application for review in respect of Directions 1, 2, and 3 is an abuse of process because the Employment Court has already determined the matters in dispute. He submitted that if Mr Halse wishes to challenge the Employment Court's finding on these issues, he should have appealed the decision to the Court of Appeal.

[47] Mr Halse submitted that Judge Corkill's previous decision on jurisdiction dealt with "whether Member Fitzgibbon could make directions, rather than whether they were lawful and enforceable". He also submitted that the earlier decision discussing the Authority's jurisdiction in respect of the first three orders was made per incuriam. On that basis, he submitted that the doctrine of res judicata does not apply and that the earlier decision is therefore irrelevant.

[48] As set out above, a pleading is an abuse of process if it amounts to an attempt to substantially relitigate a determined matter.[26] Therefore, it is necessary to determine whether Mr Halse is trying to relitigate a matter that has already been determined.

[49] In *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* Judge Corkill noted that he was addressing the following issues:[27]

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25 *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* above n 2, at [160]–[169].
26 See above n 20.
27 *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* above n 2, at [6].

a) What powers did the Authority have in relation to the making of the directions?

b) Were the directions made by the Authority in this case valid and enforceable?

[50] Given that Judge Corkill stated he would consider whether the directions were valid and enforceable, Mr Halse's submission that Judge Corkill's decision did not address whether the directions were lawful and enforceable is untenable.

[51] In the decision, Judge Corkill summarised the role, jurisdiction and powers of the Authority.[28] He then turned to consider whether the Authority had power to issue the impugned directions. He held that the Authority had power to make Directions 1 (dated 23 May 2017) and 2 (dated 23 March 2018).[29] However, he concluded that it did not have power to make Direction 3 (dated 3 December 2018).[30] The Court of Appeal noted that Judge Corkill's decision employed "extensive analysis".[31] It is plain therefore that the issues raised by Mr Halse have already been determined.

[52] Mr Halse submitted that Judge Corkill's decision was made per incuriam. However, a decision will only be made per incuriam if a court has overlooked a relevant statute, rule or particularly important precedent.[32] Mr Halse's submissions do not provide any basis for an assertion that Judge Corkill overlooked anything critical in his decision.

[53] Finally, given that the Court of Appeal refused Mr Halse leave to appeal on the grounds that his delay in bringing the appeal would substantially prejudice the DHB, it would be unjust to allow Mr Halse to bypass Judge Corkill's decision and force the DHB to defend itself once again in a matter in which it has already been successful.

[54] Accordingly, Mr Halse's application in respect of Directions 1, 2, and 3 is struck out for being an abuse of process.

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28 At [43]–[86].
29 At [110] and [122].
30 At [152].
31 *H v Bay of Plenty District Health Board* [2022] NZCA 260.
32 *Singh v Police* [2021] NZCA 91.

Issue four: Is the judicial review application vexatious?

[55] Mr Beech also submitted that the proceedings should be struck out for being vexatious. He submitted that the DHB has been required to deal with a multitude of misconceived proceedings relating to the same matter and that this is simply another misconceived application. He submitted that these matters should be brought to an end.

[56] In respect of Mr Beech's assertion that the proceedings are vexatious, Mr Halse submitted that although the proceedings may vex the DHB, they are not vexatious. Further, he submitted that the DHB has needed to deal with a multitude of matters as a result of its decision to bring proceedings against Mr Halse, CultureSafe and Ms Shaw, not as a result of Mr Halse's actions.

[57] Having already determined that the application to strike out is successful in regard to all three determinations and the removal determination for the reasons set out above, it may not be necessary to consider this aspect of the application.

[58] However, in an excess of caution, I confirm that I find that the proceedings are vexatious on the basis of the history of unsuccessful proceedings.[33]

[59] As noted by the DHB, the parties have been involved in a number of proceedings dealing with these matters. Judge Corkill issued a judgment which considered whether the Authority had the jurisdiction to make the directions. As already noted above, he concluded that it did have that jurisdiction.[34]

[60] Mr Halse then sought to review those same directions via judicial review in the Court of Appeal.[35] The Court of Appeal struck out his application on the grounds that the Authority's jurisdiction had to be reviewed at first instance by the Employment Court rather than the Court of Appeal.[36] In the same proceedings, Mr Halse sought judicial review of Judge Corkill's decision, but the Court of Appeal struck out this

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33 *Reekie v Attorney-General*, above n 16, at [39].
34 *Bay of Plenty District Health Board v CultureSafe NZ Ltd,* above n 2.
35 *H v Employment Relations Authority* [2021] NZCA 507, [2021] ERNZ 858.
36 At [35].

application because it found that "the proper avenue to challenge the Employment Court's finding would be an appeal on a question of law".[37]

[61] After receiving the Court of Appeal's decision, Mr Halse sought leave to appeal that decision to the Supreme Court; however, the Supreme Court refused leave to hear the appeal.[38]

[62] Mr Halse then sought leave to appeal Judge Corkill's decision to the Court of Appeal.[39] Leave to appeal was denied on the basis that the appeal was too delayed and also on the basis that the DHB was prejudiced by having to continue to defend proceedings in which Mr Halse had largely been unsuccessful.[40]

[63] Contrary to Mr Halse's submission,[41] these were proceedings initiated by him, not the DHB. Mr Halse has been somewhat indiscriminate with his claims. He has sought to challenge or judicially review even decisions of the Authority and the Court which were resolved in his favour.[42] His many failed proceedings may indicate that he lacks an understanding of when to challenge/appeal or when to bring judicial review proceedings, as opposed to being vexatious. His attempt to judicially review rather than appeal Judge Corkill's decision is an example of that. However, while Mr Halse would say this is because he is not a trained lawyer, he is an experienced advocate who appears regularly in this jurisdiction on behalf of others; it is his responsibility to ensure that he understands the appropriate pathway to challenge a decision.

[64] To bring this proceeding in the face of the numerous failed claims set out above is vexatious. It illustrates an unreasonable and tendentious conduct of litigation and a pattern of behaviour characterised by a refusal to accept adverse decisions.[43]

[65] Accordingly, the review application in respect of Directions 1, 2, and 3 would also be struck out for being vexatious.

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37 At [39].
38 *H v Employment Relations Authority* [2021] NZSC 188.
39 *H v Bay of Plenty District Health Board* [2022] NZCA 260.
40 At [21]–[22].
41 See above at [56].
42 See generally *H v Employment Relations Authority,* above n 35, at [41].
43 *Reekie v Attorney-General*, above n 16.

Conclusion

[66] For the reasons set out above, I find that:

(a) the judicial review application in respect of Directions 1, 2, and 3 should be struck out because it is vexatious and an abuse of process; and

(b) the application in respect of the removal determination should be struck out because it discloses no reasonably arguable cause of action.

[67] Accordingly, I order that Mr Halse's entire judicial review application be struck out.

[68] Costs are reserved. The parties are encouraged to attempt to agree this issue in the first instance. If that does not prove possible, any application should be made by filing and serving a memorandum within 21 days of the date of this judgment, with a response by memorandum filed and served within a further 14 days.

Kathryn Beck
Judge

Judgment signed at 3.30 pm on 18 August 2022