

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2022-485-573
[2022] NZHC 2359**

UNDER the New Zealand Bill of Rights

IN THE MATTER OF an application to the head-of-bench, and
formal complaint to same

BETWEEN CHRISTOPHER JOSEPH O'NEILL
Applicant

AND THE JUDICIARY OF AUCKLAND HIGH
COURT, THE REGISTRY OF AUCKLAND
HIGH COURT AND PERSONS AS YET
UNKNOWN
Defendants

On the Papers

Judgment: 14 September 2022

JUDGMENT OF GWYN J

Introduction

[1] Mr O'Neill presented for filing in the Wellington Registry of the High Court a proceeding against the above named defendants. The proceedings were referred to me, as Duty Judge, by the Registrar under r 5.35A of the High Court Rules 2016 (the Rules), which provides:

5.35A Registrar may refer plainly abusive proceeding to Judge before service

- (1) This rule applies if a Registrar believes that, on the face of a proceeding tendered for filing, the proceeding is plainly an abuse of the process of the court.
- (2) The Registrar must accept the proceeding for filing if it meets the formal requirements for documents set out in rules 5.3 to 5.16.

- (3) However, the Registrar may,—
 - (a) as soon as practicable after accepting the proceeding for filing, refer it to a Judge for consideration under rule 5.35B; and
 - (b) until a Judge has considered the proceeding under that rule, decline to sign and release the notice of proceeding and attached memorandum for the plaintiff or the applicant (as appropriate) to serve the proceeding.

The application

[2] The document filed is labelled an interlocutory application without notice. It states that it is filed under the New Zealand Bill of Rights, as “an application to the head-of-bench, and formal complaint to same”. The application refers to a complaint made by the applicant, Mr O’Neill, to the New Zealand Law Society, which issued a decision dated 23 December 2021. It appears that Mr O’Neill applied for a review of that decision, designated LCRO 51/2022. The current application appears to relate to subsequent steps. The application makes certain allegations against the Review Officer and a Ministry of Justice official, together with unspecified allegations against a High Court Judge and a Court Registrar.

[3] It appears from the application that Mr O’Neill filed an application in relation to these allegations in the Auckland High Court on 31 May 2022.

My assessment

[4] Proceedings referred under r 5.35A are considered by a Judge under r 5.35B which provides:

5.35B Judge’s powers to make orders and give directions before service

- (1) This rule applies if a Judge to whom a Registrar refers a proceeding under rule 5.35A is satisfied that the proceeding is plainly an abuse of the process of the court.
- (2) The Judge may, on his or her own initiative, make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that—
 - (a) the proceeding be struck out;
 - (b) the proceeding be stayed until further order;
 - (c) documents for service be kept by the court and not be served until the stay is lifted:

- (d) no application to lift the stay be heard until the person who filed the proceeding files further documents as specified in the order (for example, an amended statement of claim or particulars of claim).
- (3) Rule 7.43(3) does not apply. However, if a Judge makes an order on the Judge's own initiative without giving the person who filed the proceeding an opportunity to be heard, the order must contain a statement of that person's right to appeal against the decision.
- (4) A copy of a Judge's decision to strike out a proceeding must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.
- (5) See rule 2.1(3)(b) concerning the exclusion of the jurisdiction and powers of a Judge under this rule from the jurisdiction and powers of an Associate Judge.

[5] In *Mathiesen v Slevin* the Court explained that deciding whether to strike out a proceeding so referred involved determining the following questions:¹

- (a) whether it would be manifestly unfair to the respondents that they be required to respond; and
- (b) whether right thinking people would regard this Court as exercising very poor control of its processes if it were to allow the applicants' document to be regarded as a proper document.

[6] In order to bring a proceeding, Mr O'Neill must set out a legal cause of action and that cause of action must be brought against the relevant defendant under the law.

No clear cause of action

[7] The application does not set out a legal cause of action. For that reason, it would be manifestly unfair to the defendants (if they had been properly identified) to respond.

No claim against identified defendants

[8] The claim purports to be again "persons as yet unknown". Plainly that does not satisfy the requirement of an identifiable defendant.

¹ *Mathiesen v Slevin* [2018] NZHC 1032, (2018) 25 PRNZ 116 at [6].

[9] To the extent the application does name parties, it does so in such broad terms (“the judiciary of Auckland High Court”, “the Registry of Auckland High Court”) that there is not a sufficiently identifiable defendant.

[10] More fundamentally, Judges of the High Court in the exercise of their judicial office enjoy absolute immunity from suit.²

[11] For the reasons set out at [7]-[10] above, I am satisfied the application meets the test imposed by r 5.35B. The defendants, to the extent they are identified, should not be required to file a defence to an application that is not legally available against them. As Mallon J said in *Smyth-Davoren v Parker & Ors*,³ “the Court would be exercising poor control of its processes if it allowed the proceedings to continue, which would require the defendants to respond through the Court process.”

[12] I make an order striking out the application.

[13] Mr O'Neill has a right of appeal against this decision.⁴ In the normal course the Court would direct that the named defendants be served with a copy of this judgment,⁵ but given I have found the defendants are not adequately identified, that is not possible.

Gwyn J

² *Nakhla v McCarthy* [1978] 1 NZLR 291 (CA) at 294, 299. *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 at [161]-[165].

³ *Smyth-Davoren v Parker & Ors* [2018] NZHC 3034 at [8].

⁴ High Court Rules, r 5.35B(3).

⁵ High Court Rules, r 5.35B(4).