

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

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

**CIV-2022-485-293  
[2022] NZHC 1225**

UNDER the New Zealand Bill of Rights  
IN THE MATTER of an application for judicial review  
BETWEEN CHRISTOPHER JOSEPH O'NEILL  
Applicant  
AND ALAN RITCHIE  
Respondent

Hearing: On the papers  
Appearances: C J O'Neill Applicant in person  
Judgment: 30 May 2022

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**JUDGMENT OF COOKE J  
(Strike out)**

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[1] These proposed judicial review proceedings have been referred to me as Duty Judge pursuant to r 5.35A of the High Court Rules 2016, 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.

[2] The proceedings are dated 4 March 2022 and have only just been referred to me due to an administrative breakdown in the Registry. Applications under this rule should be dealt with more promptly.

[3] Under r 5.35B the Court has certain powers in relation to a proceedings so referred. It 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).

...

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

- (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.

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

## **The present case**

[5] The proposed statement of claim seeks to judicially review decisions of the Judicial Conduct Commissioner. The decisions, communicated by letter dated 23 February 2022, dismissed four complaints made by Mr O’Neill against a number of Judges — Justices Kós and Goddard, Justices Kós and Cooper, Justices Thomas and Cull and Judge McGuire. The letter records that the Commissioner dismissed the complaints as vexatious. It is noteworthy that the Commissioner addresses Mr O’Neill’s criticism that there was a conflict in his dealing with the complaints and that he had concluded that there were reasons why he should deal with them. They included that Mr O’Neill’s judicial review proceedings had been struck out as an abuse of process, and that there had been “a constant stream of abusive commentary in virtually all of his 121 complaints” directed to the Commissioner’s office.

[6] That is also so of Mr O’Neill’s proceedings in this Court, which have frequently descended into abuse.<sup>2</sup> I have nevertheless examined the content of the proposed claim to see if there could be any merit in it. The proceedings appear to be a general complaint that the Commissioner is not carrying out his functions appropriately and that he has had a conflict of interest. I can see no potential merit in the claim. Moreover the proceedings involve circularity. One of the complaints dismissed by the Commissioner relates to a decision of the Court striking out judicial review proceedings as an abuse of process. He now brings these proceedings challenging the dismissal of the complaint relating to that decision. Mr O’Neill’s proceedings can generally be described as a persistent and repetitive attack upon the judicial system, usually in abusive terms. Whilst there is no objectionable abuse contained in these proposed proceedings, they are nevertheless part of the same, ultimately circular, attack.

[7] For these reasons it is clear to me that the proceedings are an abuse of process. It would be unfair to expect the respondent to plead to it, and the Court would not be exercising appropriate control of its processes to allow the proceedings to continue.

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<sup>2</sup> See *O’Neill v The New Zealand Law Society* [2021] NZHC 607.

[8] Accordingly the proceedings are struck out. I direct the Registrar to provide a copy of this decision to the Judicial Conduct Commissioner in accordance with r 5.35B(4) and I record that Mr O'Neill has a right to appeal this decision.

**Cooke J**