

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

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

**CIV-2022-485-188  
[2022] NZHC 3018**

UNDER the Common Law of England confirmed in the Magna Carter 1297 c29; [1368] 42 Edw.3, c.1; and under the inherent jurisdiction

IN THE MATTER OF an application for a declaratory judgment as to the construction or validity of the Mental Health (Compulsory Assessment and Treatment) Act 1992

BETWEEN JOHN HOWARD CARTER  
Applicant

AND CAPITAL AND COAST DISTRICT  
HEALTH BOARD  
First Respondent

HUTT VALLEY DISTRICT HEALTH  
BOARD  
Second Respondent

ATTORNEY-GENERAL (for the Ministry  
of Health)  
Third Respondent

Hearing: 17 November 2022

Counsel: I Reuvecamp for First and Second Respondents  
M Clarke-Parker and C S Sinclair for Third Respondent  
J H Carter in person

Judgment: 17 November 2022

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**JUDGMENT OF CHURCHMAN J  
[Strike out application]**

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## Mr Carter

[1] Mr Carter is a man of firm views. He is also a prolific litigant. Over the past 30 or so years, he has commenced a large number of proceedings in a variety of Courts.<sup>1</sup>

[2] The usual target of Mr Carter's litigation is either the Crown or various Crown-related entities.

[3] It would not be an exaggeration to say that Mr Carter has become fixated about certain issues. One of those issues is psychiatry. His concerns about psychiatry led to him filing a statement of claim dated 26 April 2022 that is the subject of these strike out proceedings.

## Background

[4] Mr Carter's claim has its origin in the death of his son, Christopher Carter, who passed away on 25 May 2010. The Coroner ruled that Christopher's death was a suicide. Mr Carter has previously litigated a number of matters relating to Christopher's death.<sup>2</sup>

[5] At the time of his passing, Christopher was subject to an inpatient order pursuant to s 30 of the Mental Health (Compulsory Assessment and Treatment) Act

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<sup>1</sup> See for example *Carter v Housing Corporation of New Zealand* DC Wellington NP 885-93, 23 August 1994; *Carter v Attorney-General* HC Wellington CP 781-87, 24 November 1994; *Carter v Attorney-General* HC Wellington CP 248-95, 12 December 1995; *Carter v Police* DC Wellington CP 175/95, 27 February 1997; *Carter v Attorney-General* HC Wellington CP 781-87, 2 April 1998; *Carter v The Treasury* NZERA Wellington WA166/05, 14 October 2005, Wellington; *Carter v The Treasury* NZERA Wellington WA2/06, 11 January 2006; *Carter v Police* HC Wellington CIV-2005-2413, 5 February 2008; *Carter v Accident Compensation Corporation* [2014] NZACC 157; *Carter v Coroner's Court at Wellington* [2015] NZHC 42; *Carter v Coroner's Court at Wellington* [2015] NZHC 462; *Carter v Coroner's Court at Wellington* [2015] NZHC 1467, [2016] 2 NZLR 133; *Carter v Accident Compensation Corporation* [2015] NZHC 2692; *Carter v The Coroner's Court at Wellington* [2015] NZHC 2998; *Carter v Secretary of the Treasury* [2016] NZERA Wellington 41; *Carter v Accident Compensation Corporation* [2016] NZHC 1140; *Carter v Capital and Coast District Health Board* [2017] NZHC 2398; *Carter v Coroner's Court at Wellington* [2018] NZHC 1781; *Carter v Coroner's Court at Wellington* [2018] NZHC 2914; and *Carter v Hutt Valley District Health Board* [2021] NZHC 2857.

<sup>2</sup> See *Carter v The Coroner's Court at Wellington* [2018] NZHC 2914; *Carter v Capital and Coast District Health Board* [2017] NZHC 2398, [2017] NZFLR 745; and *Carter v The Coroner's Court at Wellington* [2015] NZHC 2998.

1992 (the Act). Mr Carter records that Christopher suffered from serious mental illness and had been receiving psychiatric treatment since 2006. He alleges that Christopher's medical treatments were not administered with respect, and that Christopher was prescribed "poisonous and experimental suicide inducing drugs which were never going to help". He alleges that psychiatry is "the practise of medical fraud for financial gain", and that all psychiatric care that Christopher received during his lifetime was illegal and/or breached Christopher's rights.

[6] Mr Carter states that his claim is brought pursuant to the common law and the High Court's inherent jurisdiction. He seeks:

1. A declaration that psychiatry is quackery.
2. A declaration that Parliament may not make quackery lawful.
3. A declaration that Chris's [sic] psychiatric treatment and care, from start to finish, breached his common law rights also affirmed in the NZBORA 1990 8-11; 15, 23(5).
4. An order that the third respondent pays the Applicant \$411.00 + damages for each day [Christopher] was unlawfully subjected to quackery under the MHCAT Act 1992.

[7] For reference, 'quackery'<sup>3</sup> is defined as the behaviour of a person who pretends to have medical knowledge.

#### *Procedural background*

[8] Mr Carter's statement of claim was filed on 26 April 2022. However, this is not the first proceeding that Mr Carter has instituted against the respondents making similar claims. Mr Carter filed proceedings in 2020, which were eventually withdrawn after Mr Carter was denied leave to file a seventh and eighth amended statement of claim. As early as 29 June 2022, the respondents in the current proceedings indicated that Mr Carter's claim would be the subject of an application to be struck out.

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<sup>3</sup> Oxford Advanced Learner's Dictionary "Definition of quackery noun from the Oxford Advanced Learner's Dictionary" Oxford Learner's Dictionaries  
<<https://www.oxfordlearnersdictionaries.com/definition/english/quackery?q=quackery>>.

## **Positions of the parties**

### *CCDHB and HVDHB*

[9] Counsel for CCDHB and HVDHB, Ms Reuecamp, submits that Mr Carter's claim discloses no reasonably arguable cause of action, is frivolous, vexatious, an abuse of process, and out of time. She says that the claim is unintelligible, does not fairly inform the respondents of the case to be met, and contains assertions that do not belong in a statement of claim. She submits that damages are not available for breaches of the Mental Health Act, and that Mr Carter does not have standing to represent Christopher.

[10] Ms Reuecamp submits that the remedies sought by Mr Carter are not available as a matter of law, in that there is no cause of action or legal basis identified that would justify the declarations or damages sought. She says that the claim is an abuse of process because it asks the Court to determine matters that it is not in a position to determine. She submits that the claim is improper given that it was filed shortly after Mr Carter discontinued similar proceedings in February 2022. She also submits that Mr Carter's conduct in the proceeding justifies a conclusion that the claim is an abuse of process.

[11] Ms Reuecamp submits that a significant amount of time and resource has been directed to addressing Mr Carter's claims by both the respondents and the Court, and that this constitutes a misuse of the Court's procedure. She says that this is unfair to the respondents, and otherwise brings the administration of justice into disrepute. Ms Reuecamp supports the Attorney-General's submissions in full.

### *Attorney-General*

[12] Counsel for the Attorney-General, Mr Clarke-Parker, submits that Mr Carter's claim discloses no reasonably arguable cause of action, is frivolous, and is also an abuse of process. He says that the claim relies on no cause of action at all, illustrates no connection between any act or omission and the remedies sought, and seeks remedies which are outside of the Court's jurisdiction. He submits like Ms

Reuvecamp, that Mr Carter does not have standing to bring claims on behalf of his son.

[13] Mr Clarke-Parker submits that Mr Carter's claim is an abuse of process because it is untenable. He also criticises the manner in which Mr Carter has pursued his claim. He says:

After filing his statement of claim in April 2022, he filed a first amended statement of claim on 11 July 2022, only to confirm at a case management conference on 25 July 2022 that he wished to rely on his original statement of claim instead, following which a close of pleadings date of 8 August 2022 was set, only to then file a memorandum on 4 August 2022 seeking an extension of time to enable him to redraft his statement of claim. It is acknowledged that lay litigants will not necessarily be familiar with all aspects of Court processes, but Mr Carter's conduct shows a casual and frivolous approach to the Court's processes. The present claim also occurs against the backdrop of Mr Carter's recently discontinued previous claim, against the same defendants, in which Mr Carter sought leave to file a seventh amended statement of claim after the close of pleadings date, as well as both transfer from the High Court to the Supreme Court and an application to adjourn the proceeding indefinitely.

(citations omitted)

[14] Mr Clarke-Parker submits that the statement of claim contains no allegations against the Attorney-General or the Crown, and that there is no connection pleaded between Christopher's treatment and the Crown. He says that it is unclear what the basis is for the Attorney-General being a party to this proceeding.

[15] Further, he submits that the statement of claim discloses no matters that the Court has the jurisdiction to resolve. For example, he says that "whether the practise of psychiatry is quackery is not a matter that the Court can resolve". He submits that the Courts do not have the power to make declarations which purport to constrain or erode parliamentary sovereignty.

*Mr Carter*

[16] Mr Carter filed unfinished submissions in opposition to the strike out application on 9 November 2022. He filed and served additional submissions at approximately 5.00pm last night.

[17] Mr Carter submits that the Crown seeks to strike out his claim because it “fears” his claim, and because “it doesn’t want [it] to be aired that psychiatry is quackery”. He touches on a number of factual matters in his submissions, which are not relevant in respect of an application for strike out. I take from these matters that Mr Carter is alleging that there is a sufficient factual basis for his claim so as to justify dismissal of the respondents’ application for strike out.

[18] Mr Carter says that Christopher’s medical team failed to give him treatment appropriate to his condition, and did not respect his inherent dignity or human rights. He takes particular issue with Christopher’s experience of akathisia, a common side-effect of antipsychotic medication which induces restlessness. As a basis for concluding that psychiatry is illegal, immoral, or unsupported by scientific evidence, Mr Carter cites a number of passages from the Bible.

### **Strike out principles**

[19] Rule 15.1 of the High Court Rules 2016 provides that the Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action, is likely to cause prejudice or delay, is frivolous or vexatious, or is an abuse of process. The following principles are relevant:<sup>4</sup>

- (a) pleaded facts whether or not admitted are assumed to be true;
- (b) the cause of action or defence must be clearly untenable;
- (c) the jurisdiction is to be exercised sparingly, and only in clear cases;
- (d) the jurisdiction is not excluded by the need to decide difficult questions of law; and
- (e) the Court is to be careful when striking out claims in any developing area of the law.

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<sup>4</sup> *Attorney-General v Prince* [1998] 1 NZLR 262, [1998] NZFLR 145 (CA) at 267, endorsed in *Couch v Attorney-General* [2008] NZSC 45 at [33].

[20] Prejudice or delay is likely to be caused where a pleading is unnecessarily prolix, purely consisting of evidential material, unintelligible, and/or inclusive of irrelevant material.<sup>5</sup>

[21] However, where a defect in the pleadings can be cured by amendments the party is willing to make, the Court will often permit amendment rather than striking out the pleadings.<sup>6</sup> The proposed amendment must be adequately clear for the Court to consider when assessing the need for strike out.

### **Analysis**

[22] It is clear, for the reasons advanced by the respondents as detailed above, that Mr Carter's statement of claim discloses no reasonably arguable cause of action and is also an abuse of process. For reasons I will now set out, I have concluded that Mr Carter's statement of claim should be struck out. It is defective, and appears to have been filed as a direct result of being unable to file seventh and eighth amended statements of claim in the prior proceeding discussed above. Mr Carter has not indicated a willingness to amend his pleadings, or suggested amendments of a nature that would be required. That, as submitted by the respondents, raises an inference that the claim itself is an abuse of process.

[23] Firstly, Mr Carter's claim does not rely on any known cause of action. It is unclear on what basis he seeks declaratory relief. There is no legal yardstick to which the Court may refer in consideration of whether in fact, psychiatry is "quackery". In other words, the Court does not have the ability to enter into such consideration, because that would require an assessment of whether an accepted body of scientific medical practise is valid. The Court is not equipped to consider that issue.

[24] Secondly, the Court does not have the jurisdiction to declare what Parliament may or may not make lawful. Parliament is sovereign. The role of the Courts is to apply the law as written by Parliament, having within contemplation Parliament's

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<sup>5</sup> *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53 at [90] and [95].

<sup>6</sup> *Marshall Futures Ltd v Marshall* [1992] 1 NZLR 316, (1991) 3 PRNZ 200.

intent. A declaration that “Parliament may not make quackery lawful” is not a remedy that is within the Court’s power to grant.

[25] Thirdly, while the Court may and often does enter into a consideration of whether certain actions by public bodies comply with the New Zealand Bill of Rights Act 1990, Mr Carter’s statement of claim fails to identify what acts or omissions were said to be breaches of that Act. It appears that Mr Carter’s claim in this respect rests solely on his assertions as to the scientific merits of psychiatry as a medical discipline. As such, this claim is also unable to be enquired into, as it is dependent upon findings on allegations which the Court is unable to consider. Mr Carter’s claim of damages under the Act must therefore also fail, given that it is likewise dependent on such findings. It is clear that damages for breach of the Act are not contemplated by the Act, and are therefore unavailable as a matter of law.

[26] Finally, as a matter of general comment, Mr Carter’s claim and submissions are unintelligible, contain a considerable amount of irrelevant factual material, and attempt to resurrect his previous proceedings. I accept the respondents’ submissions that Mr Carter’s standing is a further issue with his claim. While strictly not necessary to enquire into whether Mr Carter does have standing to bring an application alleging the breach of his deceased son’s rights, it is clear that Mr Carter’s own rights are not the subject of the claim. As noted by Mr Clarke-Parker, the Court of Appeal has expressed scepticism as to the standing of a plaintiff seeking declaratory relief, where that plaintiff’s rights are not directly engaged.<sup>7</sup> I consider that this proceeding is sufficiently similar so as to warrant a conclusion that Mr Carter’s standing is doubtful.

## **Result**

[27] I am satisfied that Mr Carter’s statement of claim filed on 27 April 2022 discloses no reasonably arguable cause of action, and that the respondents’ application to strike out that claim should be allowed. That ends these proceedings. If there is no valid statement of claim, it is not necessary to consider the interlocutory applications that Mr Carter appeared to want to bring.

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<sup>7</sup> *Attorney-General v Taylor* [2017] NZCA 215, [2017] 3 NZLR 24 at [177].



[28] The Attorney-General seeks costs. CCDHB and HVDHB have not indicated whether they seek costs. Having to reply to these baseless proceedings will have caused the respondents cost and inconvenience. If the respondents intend to pursue costs, they may file memoranda within 10 working days of this decision, with Mr Carter having a further 10 working days to respond. I will then deal with the matter on the papers.

### **Churchman J**

Solicitors:  
Vida Law, Wellington for First and Second Respondents  
Meredith Connell, Wellington for Third Respondent

Copy to:  
J H Carter