

BETWEEN

ALAN IVO GREER  
Applicant

AND

RAY SMITH  
First Respondent

JACK HARRISON  
Second Respondent

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**EX PARTE APPLICATION FOR DISCHARGE OR VARIATION OF  
CHAMBERS RULING UNDER Section 28(3) of the SUPREME COURT ACT  
2003**

**2 November 2016**

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**To the Registrar of the SUPREME COURT**

## To the Registrar of the SUPREME COURT

I, **Vince Siemer**, the Applicant, under **s28(3) of the Supreme Court Act 2003**, apply for reversal or correction of O'Regan J's 28 October 2016 ruling prohibiting access to court transcripts/records relating to Judgment SC80/2015 [2015] NZSC 196 ("**the Chambers Minute**").

### UPON THE GROUNDS:

1. The Chambers Minute reasons are in all likelihood legally and factually incorrect, thereby making its ruling unsafe.
2. If the Chambers Minute representation is correct that no court record exists in respect to legal questions decided in this Court's judgment *Greer v Smith [2015] NZSC 196*, it stands as confirmation that this judgment's orders limiting access to court records and prohibiting first instance appeals against originating single judge chambers orders which prevent public access are ultra vires.

### PARTICULARS

3. This Court's Judgment *Greer v Smith [2015] NZSC 196* ("the Judgment") created new law on (1) access to Supreme Court public records and (2) due process of law. Specifically, the Judgment declared the Supreme Court exempt from public record search statutes and usurped its Registrar's authority to grant access to public court records, then declared originating private rulings by any one of its members which deny access to court records are exempt from the cardinal right of a first instance appeal.
4. In response to a request to see the public record underpinning this new legal authority, the Chambers Minute represented no transcripts or records exist in respect to the Judgment other than "*Mr Siemer's application dated 2 November 2015*".<sup>1</sup>
5. Mr Siemer made no application or submission in respect to the new laws laid down in the Judgment. The 'application' referred to by the Chambers Minute was in fact a request for access to the *completed* file of *Greer v Smith*, an appeal where Mr Siemer was not a party. The Chambers Minute admission that no party, Crown applicant or intervener raised the legal questions determined in the Judgment or were heard from appears to confirm these questions were never legitimately before this Court. As the appeal had prior to this been conclusively determined, this Court was *functus officio* – and *functus officio* was underscored by the Supreme Court not giving any of the parties notice or allowing them to be heard on these issues they clearly had not brought before this Court.

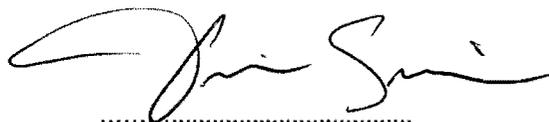
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<sup>1</sup> At [3]

6. More basically, the Chambers Minute, if correct, asserts not only that the Judgment's legal conclusions determined questions not raised by anyone but that no record exists on how these questions came before this Court or how they were determined. This cannot be or, if it is, it cannot be lawful.
7. The Chambers Minute representation "*There was no hearing and hence no transcript.*" is puzzling. If true, this representation confirms all members of this Court, acting together:
  - a) Failed to properly convene the Court or to keep any record,  
or
  - b) Intentionally kept all judicial actions leading to the Judgment off the record.
8. As either action violates New Zealand's constitution and the common law, it is submitted as more likely that the Chambers Minute representation in this regard is in error and that the record of this Court convening to consider the new law decided in the judgment exists in a form overlooked by Justice O'Regan.
9. Because the Chambers Minute implausibly represents the law decided by the full Supreme Court bench in the Judgment was created in a vacuum where the questions determined had not been put to the Court, where no party was given notice or heard from, and where the Court had not legitimately convened and no record was kept, this Application for section 28(3) review seeks correction of the Chambers Minute or, in the alternative, confirmation as to the non-existence of any court record leading to the Judgment. It relies additionally upon this Court's recent Judgment *Erceg v Erceg* [2016] NZSC 135 -

“[2] The principle of open justice is fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance, and has been described as “an almost priceless inheritance”. The principle’s underlying rationale is that transparency of court proceedings maintains public confidence in the administration of justice by guarding against arbitrariness or partiality, and suspicion of arbitrariness or partiality, on the part of courts. Open justice “imposes a certain self-discipline on all who are engaged in the adjudicatory process – parties, witnesses, counsel, Court officers and Judges”. The principle means not only that judicial proceedings should be held in open court, accessible by the public, but also that media representatives should be free to provide fair and accurate reports of what occurs in court. Given the reality that few members of the public will be able to attend particular hearings, the media carry an important responsibility in this respect. The courts have confirmed these propositions on many occasions, often in stirring language.”

[footnotes omitted]



Vince Siemer, Applicant