

**In the High Court of New Zealand  
Wellington Registry**

CIV-2016-485-781

**Under** the Judicature Amendment Act 1972 and s 27(2) of the New Zealand Bill of Rights Act 1990

**In the matter** an application for judicial review under s 16 of the Judicial Conduct Commissioner and Judicial Panel Act 2004

**Between** **Malcolm Edward Rabson**  
Applicant

**And** **Judicial Conduct Commissioner**  
First Respondent

**And** **Justices Elias, Young, Arnold, Glazebrook and O'Regan**  
Second Respondents

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**Notice of application by first respondent for  
strike out**

**21 October 2016**

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**Next event:** Mention, 31 October 2016

**MEREDITH  
CONNELL**

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# Notice of application by first respondent to strike out

**To:** the Registrar of the High Court at Wellington

**And to:** the applicant

**And to:** the second respondents

- 1 This document notifies you that the first respondent, the Judicial Conduct Commissioner (the **Commissioner**) will on the next available date apply to the Court for:
  - (a) an order striking out the applicant's statement of claim;
  - (b) an order for indemnity costs in favour of the Commissioner; and
  - (c) an order extending the time for filing a statement of defence until further order of the Court.
  
- 2 The grounds on which the above orders are sought are:
  - (a) there is no dispute as to any matter of fact relevant to the application for judicial review;
  - (b) section 8(2) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the **Act**) provides that it is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a Judge in relation to any legal proceedings;
  - (c) section 16(1)(a) of the Act provides that the Commissioner must dismiss a complaint if he or she is of the opinion that the complaint is not within the Commissioner's jurisdiction;
  - (d) under these provisions the Commissioner is required to dismiss complaints that require the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a Judge in relation to any legal proceedings;
  - (e) the Commissioner dismissed the complaint made by Mr Rabson under s 16(1)(a) of the Act on the basis that the complaint was not within his jurisdiction, by virtue of s 8(2);
  - (f) Mr Rabson's allegations of misconduct relating to convening to make a decision depend on the legality or correctness of the decision;
  - (g) it is clear that s 8(2) applies to the complaint, and that the Commissioner was required to dismiss this complaint;

- (h) the nature of Mr Rabson's complaints to the Commissioner and these proceedings are such that these proceedings are not a proper use of the Court's time;
- (i) in these circumstances, the claim cannot succeed, discloses no reasonable cause of action, and is frivolous and vexatious or otherwise an abuse of process of the Court.

3 This application is made in reliance on:

- (a) rr 14.6 and 15.1 of the High Court Rules;
- (b) the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004;
- (c) *Siemer v Judicial Conduct Commissioner* [2013] NZHC 1853; *Chamberlains v Lai* [2006] NZSC 70, [2007] 2 NZLR 7.
- (d) the affidavit of Gavin Duffy affirmed on 20 October 2016 in support of this application.

Date: 21 October 2016



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L Theron / C Cross  
Counsel for the Commissioner

This document is filed by Liesle Theron, solicitor for the Judicial Conduct Commissioner, of the firm Meredith Connell. The address for service is Level 13 Pencarrow House, 58–66 Jervois Quay, Wellington.

Documents for service for the Judicial Conduct Commissioner may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 24546, Wellington 6140; or
- (b) transmitted to the solicitor by facsimile on 04 914 0549; or
- (c) emailed to the solicitor at [liesle.theron@mc.co.nz](mailto:liesle.theron@mc.co.nz).