

**DUPLICATE**

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

**CIV2016 485 781**

**UNDER**

**The Judicature Amendment Act 1972 and  
s27(2) of the New Zealand Bill of Rights Act  
1990**

**IN THE MATTER OF**

**An Application for Judicial Review under s  
16 of the Judicial Conduct Commissioner  
and Judicial Panel Act 2004**

**BETWEEN**

**MALCOLM EDWARD RABSON**  
Trustee  
House 10, 618 Maungatautari Rd  
Cambridge  
Applicant

**AND**

**JUDICIAL CONDUCT COMMISSIONER**  
P.O. Box 2661  
Wellington  
Fax: 04 472 6159  
First Respondent

**AND**

**JUSTICES ELIAS, YOUNG, ARNOLD,  
GLAZEBROOK and O'REGAN**  
SUPREME COURT OF NEW ZEALAND  
c/o Registrar  
Lambton Quay at Ballance Street  
Wellington  
Second Respondents

---

**NOTICE OF PROCEEDING**

30 September 2016

---

Filed by the Applicant in person, whose service address is  
House 10, 618 Maungatautari Rd  
Cambridge  
And by email: [bluescape@xtra.co.nz](mailto:bluescape@xtra.co.nz)

Case Manager
Next Event: / /
<b>30 SEP 2016</b>
THE HIGH COURT WELLINGTON

## NOTICE OF PROCEEDING

To the respondents and any other person directed to be served.

This document notifies you that you must file in this registry of the court a statement of defence to the applicant's claim (a copy of which is served with this notice). You must do this within 25\* working days after the date on which you have been served with this notice.

If you do not, the applicant may at once proceed to judgment on the applicant's claim, and judgment may be given in your absence.

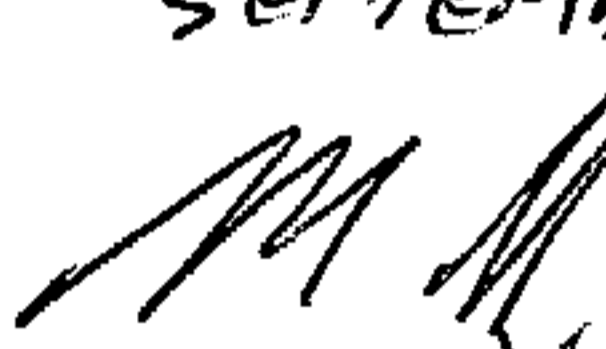
If a trial of the proceeding is necessary, it will be held in this court at Wellington at a time to be fixed by the court.

\*Substitute "30", in accordance with rules 5.47(3) and 6.35, if this notice is served out of New Zealand.

Date: 30<sup>TH</sup> SEPTEMBER 2016

Signature:

(applicant)



If you file a statement of defence in the court, you must also provide the applicant with initial disclosure of documents in accordance with rule 8.4.

If you file a statement of defence in the court, you will be notified of the date and time of the first case management conference.

The purpose of the conference is to assist the parties in the just, speedy, and inexpensive determination of the proceeding, to make directions as to the conduct of the proceeding, and, where practicable, to make interlocutory orders. The parties will also be assisted to identify, define, and refine the issues in dispute.

You must prepare for and attend the first case management conference.

You will be expected to have discussed with the applicant the matters set out in Schedule 5 of the High Court Rules. You or your solicitor must file a memorandum relating to the procedural matters set out in rule 7.3 of the High Court Rules.

\*Select one.

Date: 30<sup>th</sup> September 2016  
(Registrar/Deputy Registrar\*)

\*Select one.



A M Mugambi  
Deputy Registrar  
of the High Court  
of Wellington

Note: Please carefully read the memorandum attached to this notice.  
Schedule 2 Schedule 1 form G 2: amended, on 11 October 2013, by rule 25(1) of the High Court (Trans-Tasman Proceedings Act 2010) Amendment Rules

Form G 3 r 5.23(4) **Memorandum** (general form)

**Advice**

1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

- (a) it can only carry on a proceeding in the court by a solicitor; and
- (b) it cannot appear to conduct a proceeding except by counsel (unless exceptional circumstances).

**Legal aid**

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 For this paragraph select the statement that applies.

Statement A - The applicant is in receipt of legal aid for the purpose of this proceeding.

Statement B - The applicant is not in receipt of legal aid for the purpose of this proceeding.

Statement C - The applicant has applied for legal aid for the purpose of this proceeding.

**Statement of defence**

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

5 Omit this paragraph if it conflicts with a direction by the court. In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the applicant and on any other respondent who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

**Counterclaim**

7 If you have a counterclaim against the applicant, you must file a statement of that counterclaim in the registry of the court, and serve it on the applicant and on any other person against whom the same claim is made. This must be done within the same period of time you have for filing a statement of defence.

**Witnesses**

8 Summonses for the attendance of witnesses will be issued on application at registry of the court.

**Registry hours**

9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

*30th September 2016*

Signature:



(Registrar/Deputy Registrar\*)

**A M Mugambi  
Deputy Registrar  
of the High Court  
of Wellington**

**DUPLICATE**

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

**CIV2016 485 781**

**UNDER**

**The Judicature Amendment Act 1972 and  
s27(2) of the New Zealand Bill of Rights Act  
1990**

**IN THE MATTER OF**

**An Application for Judicial Review under s  
16 of the Judicial Conduct Commissioner  
and Judicial Panel Act 2004**

**BETWEEN**

**MALCOLM EDWARD RABSON**  
Trustee  
House 10, 618 Maungatautari Rd  
Cambridge  
Applicant

**AND**

**JUDICIAL CONDUCT COMMISSIONER**  
P.O. Box 2661  
Wellington  
First Respondent

**AND**

**JUSTICES ELIAS, YOUNG, ARNOLD,  
GLAZEBROOK and O'REGAN**  
SUPREME COURT OF NEW ZEALAND  
c/o Registrar  
Lambton Quay at Ballance St  
Second Respondents

---

**JUDICIAL REVIEW CLAIM**

30 September 2016

---

Filed by: Malcolm Edward Rabson  
Address for service: House 10, 618 Maungatautari, Cambridge  
And by email: [bluescape@xtra.co.nz](mailto:bluescape@xtra.co.nz)

Case Manager
Next Event: / /
<b>30 SEP 2016</b>
<b>THE HIGH COURT</b> WELLINGTON

## STATEMENT OF CLAIM

### The Applicant says:

- 1.0 The Applicant is a trustee, former businessman and recipient of a \$1.2 Million New Zealand Court of Appeal judgment in a relationship property division of \$2.4 Million in December 2011<sup>1</sup> - an order which the Court-appointed trustee failed to pay. This limited experience with the New Zealand courts revealed to him judicial manipulation of proceedings outside the framework of the law, as well as that *ex parte* court communications and off-record rulings are not uncommon.
- 2.0 The first Respondent is a Crown body with the statutory obligation under the *Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004* ("**the Act**") to deal forthrightly under the Act with personal and professional misconduct complaints made against New Zealand judges.
- 3.0 The Second Respondents are, at time of filing, High Court Judges sitting on the Supreme Court of New Zealand, against whom the Applicant lodged professional misconduct complaints with the First Respondent in early 2016. Although no relief is sought in this Judicial Review against them, they are named on grounds they have a lawful interest.

### FACTUAL BACKGROUND

- 4.0 By formal letter dated 18 August 2016 to the First Respondent, the Applicant lodged a complaint against the second respondents for acting unlawfully ("**the Complaint**").
- 5.0 Specifically, the Complaint alleged the Second Respondents –  
  

**"Conspired with one another to convene secretly and off the record with the purpose and effect of exempting themselves from laws passed by the NZ legislature which bind judges and, in so doing, violate their own oaths of office to maintain the rule of law."**
- 6.0 The Complaint detailed the conduct complained about included the Second Respondents:
  - 6.1 Convening *ex parte* and without notice in a *functus officio* role (under the guise of the case *Greer v Smith* which had previously been conclusively decided and was no longer a matter before the Court).
  - 6.2 Convening to rule on *issues* not before any Court (specifically new rules limiting access to public court records of the Supreme Court).

---

<sup>1</sup> CA507/2010 CA726/2010 [2011] NZCA 669

- 6.3 Unconstitutionally creating new law in a manner not permitted by law (i.e. the Second Respondents acted secretly and off the record, without notice or submissions from anyone, to decide legal issues they alone had privately raised).
- 7.0 By letter dated 26 September 2016, the First Respondent refused to consider the merits of the Complaint, instead dismissing the Complaint on grounds it fell outside his jurisdiction to consider, relying on section 16(1)(a) of the Act. (“the Decision”)
- 8.0 At paragraph 4, the Decision materially concluded –
- “You should not, therefore, expect me to entertain your complaint, which alleges that the 18 December 2015 judgment was unlawful in multiple respects.”**
- 9.0 The Decision mistook or confused an unlawful judicial decision with the judicial misconduct preceding it – misconduct which the Complaint concerned.
- 10.0 According to the Decision, the First Respondent’s position is to refuse to consider any judicial misconduct which occurs in the process of a judge or judges making or issuing a judicial decision on grounds sections 8(2) and 16(1) of the Act prevent him from doing so.
- 11.0 The Complaint did not challenge the unlawfulness of the judgment but rather the unlawfulness of the Second Respondents’ actions of convening unlawfully.
- 12.0 The Complaint referred to two formal representations presented to Parliament by the Second Respondents which confirmed their view was also that the actions complained about in the Complaint was unlawful conduct, these being formal submissions in opposition to *the Judicial Matters Bill* in 2003 and in opposition to the *Register of Pecuniary Interests of Judges Bill* in 2012.

## **GROUND FOR JUDICIAL REVIEW AGAINST THE FIRST RESPONDENT**

- 13.0 **THE DECISION IS BASED UPON AN ERROR IN LAW**
- 14.0 The First Respondent erred in law in not considering the merits of the Complaint.
- 15.0 The First Respondent erred in law when concluding the issues he had identified were not matters of conduct but rather related to judicial decision-making which falls outside his jurisdiction to address under the Act.
- 16.0 **PROCEDURAL IMPROPRIETY**



17.0 The First Respondent's approach in focusing upon the judgment issued by the Second Respondents rather than their conduct prior to issuing the judgment was procedurally improper.

**18.0 THE FIRST DEFENDANT'S INTERPRETATION OF THE LIMITS IMPOSED UPON HIS JURISDICTION BY SECTIONS 8(2) and 16(1) of the ACT IS DIFFERENT THAN WHAT PARLIAMENT INTENDED**

19.0 The First Respondent's claim that judges acting unlawfully in *the course of or preceding the* issuance of a judgment fall outside his jurisdiction under the Act is improper and different from what Parliament intended with passage of the Act.

**20.0 THE DECISION WAS BASED UPON IRRELEVANT CONSIDERATIONS**

21.0 The Decision's reliance upon the judgment issued by the Second Respondents was an irrelevant consideration, as it was the judicial misconduct preceding the judgment which was at issue.

**22.0 FAILURE TO TAKE INTO ACCOUNT RELEVANT CONSIDERATIONS**

23.0 The First Respondent failed to consider any merits of the Complaint, herein summarised at paragraphs 5 and 6, which was required for a proper determination.

WHEREFORE the Applicant seeks:


24.0 A finding the First Respondent breached his statutory obligations under the Act in respect to the Complaint.

25.0 A finding that one or more grounds of this Judicial Review have been made out.

26.0 A finding that the First Respondent's approach to the Complaint was improper.

27.0 A direction that the First Respondent now properly determine the merits of the Complaint.

28.0 Such other relief as the Court deems fit.

  
Malcolm Edward Rabson, Applicant

This document is filed by the Applicant, whose address for service is [bluescape@xtra.co.nz](mailto:bluescape@xtra.co.nz)

Copies to the First Respondent and Crown Law for the second Respondent

DUPLICATE

OFFICE OF THE  
**Judicial Conduct Commissioner**

26 September 2016

**PRIVATE AND CONFIDENTIAL**

Mr Malcolm Rabson  
House 10, 618 Maungatautari Road  
Cambridge

By email to: [bluescape@xtra.xco.nz](mailto:bluescape@xtra.xco.nz)

Dear Mr Rabson

**Complaint about Chief Justice Elias and Justices William Young, Glazebrook, Arnold and O'Regan**

1. Your complaint about these Judges (your letter of 18 August 2016) concerned the Supreme Court's judgment of 18 December 2015<sup>1</sup> in *Greer v Smith*.

**Background**

2. You previously complained about this judgment on 1 January 2016. In my decision of 13 April 2016<sup>2</sup>, I dismissed the complaint under section 16(1)(a) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 because it sought to challenge the correctness of the Court's judgment, which falls outside my jurisdiction<sup>3</sup>.

**Your complaint**

3. You know that section 8(2) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 expressly provides that it is not a function of the Commissioner to "challenge or call into question the *legality* or correctness" of any judicial decision. (my emphasis)
4. You should not, therefore, expect me to entertain your complaint, which alleges that the 18 December 2015 judgment was unlawful in multiple respects.

**Decision**

<sup>1</sup> *Greer v Smith* [2015] NZSC 196.

<sup>2</sup> JCC decision of 13 April 2016 on complaint by Mr M Rabson dated 1 January 2016.

<sup>3</sup> Section 8(2), Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

Case Manager
Next Event: / /
<b>30 SEP 2016</b>
THE HIGH COURT WELLINGTON



5. Your complaint falls outside my jurisdiction. I must therefore dismiss it under section 16(1)(a) of the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan Ritchie', with a stylized flourish at the end.

Alan Ritchie  
**Judicial Conduct Commissioner**



**NOTICE OF DATE OF HEARING - MENTION ONLY**

Judicial Conduct Commissioner

**DATE:** 30 September 2016  
**REFERENCE NO:** CIV-2016-485-000781  
**CASE NAME:** Rabson v Judicial Conduct Commissioner

The above matter has been set down For Mention Only. I can advise the matter will be called on:

**Hearing Date:** Monday 31st day of October 2016 at 10:00 AM.  
**Place:** High Court, Wellington

If settlement is reached prior to the date indicated would you please notify the Court immediately. This will enable Court time to be made available for other litigants.

If you have any queries please telephone the High Court and ask for Michaela Stack, (04) 914 3616  
Michaela.Stack@justice.govt.nz.

A handwritten signature in black ink, appearing to read 'A M Mugambi'.

A M Mugambi

Michaela Stack  
Deputy Registrar

**Copy To:** Malcolm Edward Rabson

**HIGH COURT**

2 Molesworth Street, Wellington 6011, SX11199, Wellington 6140, New Zealand.  
Telephone: 0800 268 787 Fax: (04) 914 3603



**NOTICE OF DATE OF HEARING - MENTION ONLY**

The Supreme Court of New Zealand  
Lambton Quay, Ballance Street,  
Wellington, New Zealand

**DATE:** 30 September 2016  
**REFERENCE NO:** CIV-2016-485-000781  
**CASE NAME:** Rabson v Judicial Conduct Commissioner

The above matter has been set down For Mention Only. I can advise the matter will be called on:

**Hearing Date:** Monday 31st day of October 2016 at 10:00 AM.  
**Place:** High Court, Wellington

If settlement is reached prior to the date indicated would you please notify the Court immediately. This will enable Court time to be made available for other litigants.

If you have any queries please telephone the High Court and ask for Michaela Stack, (04) 914 3616  
Michaela.Stack@justice.govt.nz.

PP

A M Mugambi

Michaela Stack  
Deputy Registrar

**HIGH COURT**

2 Molesworth Street , Wellington 6011, SX11199, Wellington 6140, New Zealand.  
Telephone: 0800 268 787 Fax: (04) 914 3603