

DUPLICATE

 IN THE NEW ZEALAND HIGH COURT

~~Wgtd~~ Auckland Registry

CIV2016 485 - 149

IN THE MATTER OF

A Judicial Review or Declaratory Relief

Under

**The Judicature Amendment Act 1972, s27(1) of the New Zealand
Bill of Rights Act 1990, and the Declaratory Judgments Act 1908**

BETWEEN

MALCOLM EDWARD RABSON

Unemployed Businessman
153 Main Road North, SH 1
Paraparaumu 5036.
Applicant

AND

ATTORNEY GENERAL

Parliament Building
c/o Crown Law
P.O. Box 2858
Wellington
Respondent

APPLICATION FOR JUDICIAL REVIEW or DECLARATORY JUDGMENT

7 March 2016

Filed by: M E Rabson
153 Main Road North, SH 1,
PARAPARAUMU 5036
bluescape@xtra.co.nz

JUDICIAL REVIEW CLAIM

The Applicant says:

- 1.0 The Applicant is a citizen of New Zealand and resident of Wellington who has been a victim of judges issuing secret rulings and failing to apply laws consistently.
- 2.0 The Respondent is the senior law officer of the Crown with principal responsibility of government compliance with the rule of law. Under chapter 4.3 of the Cabinet Manual 2008 in particular, **"The Attorney-General has a responsibility to notify Cabinet of any proposals or government actions that do not comply with existing law and to propose action to remedy such matters."**

AT ISSUE

- 4.0 On or about 11 January 2016, via emails to his Parliamentary address and Crown Law Office, the Applicant applied for the Respondent to comply with his 'Law Officer Role' and notify Cabinet under 4.3 of the Cabinet Manual of non-compliance with existing law by Supreme Court of New Zealand judges ("the Application").
- 5.0 The Application identified all five Supreme Court judges had on their own motion convened privately in chambers to declare new procedural limits in law and had done so *functus officio*, i.e. under the auspices of an appeal which had been previously and finally determined (*Greer v Smith*).
- 6.0 Specifically, the following three breaches were identified in the Application as having been committed by the Supreme Court judges in December 2015:
 - 6.1 "All five judges acted, secretly and on their own motion, without notice or hearing, to create new law on 2 legal questions not before the Court. (the Constitutional breach)
 - 6.3 An unlawful negation of **section 28(3) of the Supreme Court Act 2003**, which legislates a right of review against single judge rulings made in chambers. (the unlawful negation of the section 28(3) jurisdiction)
 - 6.4 Acknowledgment by the full Supreme Court bench that relevant laws enacted by Parliament over the past 43 years were evaded, including "civil and criminal search rules in 1973 and 1974 respectively", the New Zealand Bill of Rights Act 1990, the Supreme Court Act 2003 and the Public Records Act 2005. (the manipulative breach)."

- 7.0 The Application relied upon the *ex parte* 18 December 2015 ruling Greer v Smith [2015] NZSC 196, which confirmed the secret meeting of the judges to change law was convened on their own private motion (“the Functus Officio Ruling”).
- 8.0 The private judge assembly and resultant Functus Officio Ruling did not comply with existing NZ law as they addressed issues not before the Court, under the pretext of an appeal previously and finally determined, where no party participated.
- 9.0 The Functus Officio Ruling created:
- 8.1 new legal limits to public access of Supreme Court records which all the Judges conceded were in conflict with public record access legislation passed by Parliament over the previous 43 years, and**
- 8.2 a regime whereby single judges of the Supreme Court could privately deny requests for court record access in the first instance, with no right of appeal against such denials, thereby negating section 28(3) of the Supreme Court Act 2003 which binds their conduct.**
- 10.0 These changes to procedural law arising in the Functus Officio Ruling were not questions before the Courts and were made without notice to or hearing from anyone, and therefore this government action did not comply with existing law.
- 11.0 The Functus Officio Ruling was made without submissions from anyone other than the five Supreme Court Judges and there is no public record of what they discussed or considered privately other than the briefly-worded result in the published Functus Officio Ruling, and therefore this government action did not comply with existing law.
- 12.0 The new laws which the Functus Officio Ruling created without public or party input are not subject to appeal challenge.
- 13.0 Judges on the Supreme Court of New Zealand do not have lawful authority to create new laws, on their own private motion, on matters not before the Courts, and not keep a record of the cloistered meeting which created the new laws.

14.0 The Respondent has refused to respond to the Application over the past two months other than an email to the Applicant dated 26 February 2016 which read, ***“Why are you sending this meretricious rubbish to me.(sic) Desist.”***

JUDICIAL REVIEW GROUNDS

Breach of Natural Justice

15.0 The Cabinet Manual 2008 places distinct responsibilities upon the Respondent to act directly on the failures to comply with existing law raised by the Application. From the Cabinet Manual:

“Attorney-General

General

4.2 The Attorney-General is the principal legal adviser (the “senior law officer”) to the government. The Attorney-General is a Minister and almost always a member of Cabinet. In Cabinet and Cabinet committee meetings, the Attorney-General gives legal advice and encourages ministerial colleagues to seek appropriate legal advice in the course of government decision making. The Attorney-General should be consulted on policy papers that raise significant legal issues.

Role of Attorney-General

Law officer role

4.3 The Attorney-General has particular responsibility for maintaining the rule of law. The Attorney-General has a responsibility to notify Cabinet of any proposals or government actions that do not comply with existing law and to propose action to remedy such matters.

[emphasis added]

16.0 The Respondent's failure to address the Application or to provide reasons for his failure to do so were in breach of natural justice and unfair given the detail of the actions failing to comply with existing law in the Application and the clarity with which 4.3 of the Cabinet Manual expressed the Respondent's duty.

Legitimate Expectation

17.0 Given the clarity of the duty imposed by 4.3 of the Cabinet Manual 2008 upon the Respondent, the Applicant took the proper procedural step of applying to the Respondent and the Respondent's failure must reasonably be construed as a denial of his lawful duty.

Fettering of Discretion (alternatively)

- 18.0 The Respondent's lack of action amounts to an abdication of his lawful duty under the Cabinet Manual or, alternatively, a delegation of these duties to the judges who have committed the rule of law breaches identified above.
- 19.0 The Respondent's lack of action is in violation of the Cabinet Manual's intent.

DECLARATORY JUDGMENT CAUSE OF ACTION

- 20.0 The law and facts of the cause of action are sufficient to warrant a declaration by the High Court under section 3 of the Declaratory Judgments Act 1908 that the Respondent has failed his duty to notify Cabinet as required under 4.3 of the Cabinet Manual 2008 concerning breaches to existing law detailed above at Paragraphs 4.0 – 12.0.

WHEREFORE the Applicant seeks:

- 21.0 A declaration that the Respondent was in breach of his Law Officer responsibility under 4.3 of the Cabinet Manual 2008 in not notifying Cabinet of the breaches to existing law by Supreme Court judges committed in December 2015 and brought to his attention on or about 11 January 2016.
- 22.0 A direction by this Court that the Respondent now comply with his duty to inform Cabinet of the rule of law breaches as described and documented.
- 23.0 Alternative to the direction that the Respondent notify Cabinet, a direction by this Court that the Respondent provide a reasoned decision on the Application in keeping with natural justice principles and the spirit of the Cabinet Manual's intent.
- 24.0 Such other relief as the Court deems fit.



Malcolm Edward Rabson, Applicant

This document is filed by the Plaintiff, whose address for service is
153 Main Road North, SH 1,
PARAPARAUMU 5036.
bluescape@xtra.co.nz

Copies: to Attorney General