

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

CIV-2009-404-003063

BETWEEN JOHN HILLARY CORBETT
Applicant

AND LEGAL COMPLAINTS REVIEW
OFFICER
Respondent

CIV-2009-404-003700

AND BETWEEN JOHN HILLARY CORBETT
Applicant

AND LEGAL COMPLAINTS REVIEW
OFFICER
Respondent

Hearing: 11 August 2009

Appearances: Applicant in Person
J A L Oliver for the Respondent

Judgment: 31 August 2009

JUDGMENT OF DUFFY J

This judgment was delivered by Justice Duffy
on 31 August 2009 at 11.45 am, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors: Crown Law P O Box 2858 Wellington 6140 for the Respondent

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[1] There are two applications to strike out judicial review proceedings brought by the applicant, Mr Corbett, who is representing himself. There is a striking similarity between each set of proceedings. I propose, therefore, to deal with the applications in the one judgment.

[2] The grounds on which the applications to strike out are based are as follows:

- i) The statements of claim disclose no reasonably arguable cause of action;
- ii) They are likely to cause prejudice or delay;
- iii) They are unintelligible to such an extent as to be frivolous or vexatious; and
- iv) They are otherwise an abuse of the process of the Court.

Background

[3] Both applications for judicial review challenge decisions of persons who hold the office of legal complaints review officer. Their decisions arise from complaints Mr Corbett had initially made to the Auckland District Law Society about the conduct of two legal practitioners, each of whom had given legal advice to and prepared wills for Mr Corbett's now deceased parents.

[4] The first complaint related to legal services that a solicitor, Bruce Dell, had provided to Mr Corbett's parents. The second complaint was in relation to legal services that a solicitor, Heather Quinn, provided to Mr Corbett's parents. Ms Quinn's services were supplied following Mr Corbett's parents terminating their instructions to Mr Dell.

[5] Mr Corbett was unhappy with the way in which the complaints were dealt with. He sought review of those complaints by a legal complaints review officer.

[6] The legal complaints review officer who dealt with the complaint against Mr Dell is Hanneke Bouchier. The decision Ms Bouchier issued is now being judicially reviewed in proceeding CIV-2009-404-3063.

[7] The legal complaints review officer who dealt with the complaint against Ms Quinn is Duncan Webb. The decision Mr Webb issued is now being judicially reviewed in proceeding CIV-2009-404-3700.

[8] The applications to strike out these judicial review proceedings have come before the Court in an unusual way. That does not detract from the merits of the arguments in favour of striking out.

[9] Perhaps, because Mr Corbett represents himself, this may explain why it is that the proceedings do not comply with s 9(4) of the Judicature Amendment Act 1972, which requires the persons affected by a decision under review to be joined in the proceedings. Consequently, the only respondent cited in each proceeding is the respective legal complaints review officer, who is the person responsible for making the decision under review.

[10] Ordinarily, when the decisions of persons who carry out judicial functions are being judicially reviewed, they take no active part in the proceeding. It is customary for such persons to file a notice that they will abide the Court's decision: see *New Zealand Engineering Coachbuilding, Aircraft, Motor and Related Trades Industrial Union of Workers v Court of Arbitration and Others* [1976] 2 NZLR 283 (CA) at 284.

[11] In these proceedings, the legal complaints review officers are the persons bringing the strike-out applications. Since the power they exercise has the potential to affect rights, I consider that they are performing a judicial or quasi-judicial function. Whilst it is unusual for persons who perform such functions to take an active stance in judicial review proceedings, I do not think there is anything to be gained by joining the solicitors who were the subjects of the complaints. The legal complaints review officers are represented by Crown Counsel, who has taken a stance in the strike-out applications that does not amount to an attempt to enter the

fray in a way that might appear to favour the solicitors: see *Engineers Union*. This was of concern to the Court of Appeal in that case.

[12] In *Engineers Union*, the Court of Appeal considered it would be unobjectionable if a judicial body put forward arguments on its jurisdiction. The type of arguments I have heard from Crown Counsel address difficulties which arise from the way in which Mr Corbett has pleaded his claim in judicial review. In that sense, the arguments resemble jurisdictional arguments. There has been no attempt to address matters on which the legal complaints review officers have expressed opinions. I propose, therefore, to deal with the strike-out applications as argued by Crown Counsel on behalf of the legal complaints review officers.

[13] The driving force behind the judicial review proceedings is Mr Corbett's unhappiness with the way in which his parents disposed of their estate and made decisions in respect of a family trust. Mr Corbett believes he should have received more from his parents' estates than he did, and that the solicitors who acted for his parents are to blame for this. He considers that the unequal distribution, which resulted in his sister getting more than he did, was due to both solicitors acting to their own advantage.

[14] The decisions of the legal complaints review officers found the solicitors to have acted appropriately and blamelessly. Because these views do not fit with Mr Corbett's view of events, he has, in the form of the judicial review proceedings, sought to bring before the Court his views on the solicitors' shortcomings and how they are responsible for him not receiving the testamentary dispositions he expected.

Grounds for striking out

[15] Rule 15.1(1)(a) permits a Court to strike out a pleading if it "discloses no reasonably arguable cause of action ... or case appropriate to the nature of the pleading". The principles to be derived from cases under the previous High Court Rules are relevant to the application of r 15.1. A judicial review proceeding is dealt with in the same way as other civil proceedings: see *Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA).

[16] The objections to the statements of claim are understandable. Neither pleading bears any resemblance to a judicial review claim. They do not disclose an arguable cause of action, nor can anything be gleaned from their contents. Both sets of pleadings are directed to contradicting the factual findings of the legal complaints review officers. In the course of the hearing, I obtained an acknowledgement from Mr Corbett that he did not accept the factual findings by either legal complaints review officer. Mr Corbett was unable to point me to anything else about the decisions under review which might be seen as evidencing one of the recognised grounds of judicial review.

[17] Mistake of fact is a ground of review, but such mistakes must be material to the outcome of the decision. With these decisions, Mr Corbett's challenge to the factual accuracy of the decisions is so widespread that only with great difficulty would it be possible to identify findings on material facts, which he contends are mistaken. No respondent opposing a judicial review proceeding should have to embark on such an exercise.

[18] In essence, Mr Corbett's case is being run as if he were exercising a right of appeal against the decisions of the legal complaints review officers. It is trite, but true, that judicial review cannot be used as a substitute for an appeal.

[19] The failure to plead reasonably arguable causes of action in a judicial review proceeding would, alone, be a ground for striking out these claims. But, as well as that, the pleadings are unnecessarily prolix. Much of each pleading is unintelligible. Hence, the pleadings can be considered likely to cause prejudice or delay in terms of r 15.1(1)(b), and would be described as frivolous and vexatious in terms of r 15.1(1)(c). Whilst some latitude can be shown to a lay litigant, this must be balanced with the need to ensure the opposing party is not unduly prejudiced. Faced with the present pleadings, it is difficult to imagine how any respondent might be expected to respond to them.

[20] In *Van der Kaap v Attorney-General* 1996 10 PRNZ 162, Hammond J approached pleadings which similarly offended the procedural requirements for pleadings by giving Mr Van der Kaap an opportunity to re-plead his statement of

claim. I see no need to do so in this case. There is nothing about the case which suggests to me that, given an opportunity to re-plead the statements of claim, Mr Corbett will be able to fashion his complaints about the decisions of the legal complaints review officers into recognisable grounds of judicial review. It follows that I consider the appropriate course of action is to allow the application and to strike out each proceeding. If Mr Corbett does have a reasonably arguable cause of action in judicial review against the legal complaints review officers, the striking out of these proceedings will not bar him from bringing fresh proceedings. Before doing so, however, he would be wise to engage the assistance of a lawyer. I was advised that Mr Corbett was a recipient of a benefit from Work and Income New Zealand, so he would presumably qualify for a grant of legal aid.

[21] The respondents have sought costs. They have 10 working days from the date of issue of this judgment to file and serve on Mr Corbett a memorandum on costs. Mr Corbett has 10 working days from the date of service to file a memorandum in response, should he wish to do so. Unless the parties request a hearing, I will deal with costs on the papers.

Duffy J