*Wislang v University of Otago and Others* [2013] NZHC 2533

(Interlocutory decision – HC Dunedin)

**Issues:** HCR, r 8.20: Pre-commencement discovery

**Judgment:** 27 September 2013

**Facts:** W, an alumnus of U, began regularly visiting U's campus. Some tensions arose as to W's presence. W made a Privacy Act request for information pertaining to him. U's Privacy Officer disclosed various documents, including emails between staff, incident reports and administrative records. W claimed he was defamed in these documents and sought an apology from U. U would not apologise.

W made application for pre-commencement discovery in respect of documents he believed still to be in the possession of U. He argued the documents existed and were likely to be defamatory of him. U argued that no such documents existed, that all had been disclosed to W by the Privacy Officer, and that W's application was frivolous, vexatious and an abuse of process.

**Held:** (Osborne AJ) The Judge rejected W's application.

**Discussion:**

The Judge re-stated the 3 elements required to be discharged under r 8.20 for pre-commencement discovery applications. See [17].

1. That the intending plaintiff is or may be entitled to claim in the Court relief against another person (the intended defendant); and
2. That it is "*impossible or impracticable*" for the intending plaintiff to "*formulate his claim without reference to a document or class of document*"; and
3. That there are grounds for belief those documents may be or have been in the possession of the person concerned.

(*See: Malayan Breweries Ltd v Lion Corp Ltd* (1988) 1 PRNZ 629 (HC) and *Welgas Holdings Ltd v Petroleum Corporation of New Zealand Ltd* (1991) 3 PRNZ 33.)

The threshold for such applications is to avoid speculative fishing. There must be likelihood of the plaintiff having a *real* claim against intended defendants.