IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2009-404-8435

BETWEEN	VINCENT ROSS SIEMER Plaintiff
AND	CHIEF JUSTICE OF THE NEW ZEALAND SUPREME COURT First Defendant
AND	THE ATTORNEY-GENERAL Second Defendant

Hearing: 5 November 2010 and 1 April 2011

Appearances: Plaintiff in person
P Gunn for the Defendants in CIV-2009-404-8435, CIV-2009-404-8438 and CIV-2010-404-0084
A Powell for the Defendants in CIV-2010-404-7025 and CIV-2010-404-7026

Judgment: 22 August 2011

JUDGMENT OF WOODHOUSE J
(Applications to strike out)

This judgment was delivered by me on 22 August 2011 at 3:00 p.m.
pursuant to r 11.5 of the High Court Rules 1985.

Registrar/Deputy Registrar

……

Parties / Solicitors:
Mr V R Siemer, Gulf Harbour
Mr P Gunn, Crown Law, Wellington
Mr A Powell, Crown Law, Wellington

Cont…

CIV-2009-404-8438

BETWEEN	VINCENT ROSS SIEMER Plaintiff
AND	THE SOLICITOR-GENERAL OF NEW ZEALAND Defendant

CIV-2010-404-0084

BETWEEN	VINCENT ROSS SIEMER Plaintiff
AND	THE SOLICITOR-GENERAL OF NEW ZEALAND Defendant

CIV-2010-404-7025

AND BETWEEN	VINCENT ROSS SIEMER Plaintiff
AND	GRAHAM LAURIE LANG First Defendant
AND	ATTORNEY GENERAL OF NEW ZEALAND Second Defendant

CIV-2010-404-7026

AND BETWEEN	VINCENT ROSS SIEMER Plaintiff
AND	MARK LESLIE COOPER First Defendant
AND	ATTORNEY GENERAL OF NEW ZEALAND Second Defendant

Introduction

[1] There are applications by or on behalf of the defendants in five proceedings to strike out the statements of claim in their entirety. In three of the proceedings there are also applications to strike out the names of one of the defendants on the grounds of judicial immunity from suit or improper joinder.

[2] Mr Siemer is the plaintiff in each proceeding. Abbreviated references for each proceeding and particulars of the defendants are as follows:

- "Claim 1" is CIV-2009-404-8435, filed on 17 December 2009. The Chief Justice is the first defendant. The Attorney-General is the second defendant.

- "Claim 2" is CIV-2009-404-8438, also filed on 17 December 2009. The Solicitor-General is the defendant.

- "Claim 3" is CIV-2010-404-0084, filed on 18 January 2010. The Solicitor-General is the defendant.

- "Claim 4" is CIV-2010-404-7025, filed on 22 October 2010. A Judge of the High Court, Lang J, is the first defendant. The Attorney-General is the second defendant.

- "Claim 5" is CIV-2010-404-7026, also filed on 22 October 2010. A Judge of the High Court, Cooper J, is the first defendant. The Attorney-General is the second defendant.

[3] In three of the proceedings the claims are contained in amended or second amended statements of claim. For convenience I will refer to the relevant statement of claim in each proceeding as "the claim". All of the statements of claim were accompanied by an affidavit of Mr Siemer. In the proceedings where there are amended statements of claim the applications to strike out were filed before the amended pleading was filed. The strike out applications nevertheless effectively

apply to the amended or second amended claim. Counsel for the defendants noted necessary modifications.

The strike out grounds

[4] The main strike out grounds are the following:

(a) The claim is an abuse of process because it is a collateral attack on final decisions of the courts. This is a ground for striking out all five claims.

(b) The claim discloses no reasonably arguable cause of action. This strike out ground was pursued at the hearing in claims 1 and 2. It was recorded in the application for strike out in claims 3 and 5, but not pursued at the hearing as a distinct ground.

(c) In claims 1, 4 and 5 there are applications to strike out the claims against the first defendants on the grounds of judicial immunity and, also, in the case of the Chief Justice in claim 1, on the ground that she cannot be sued as representative of the judiciary.

(d) There are some further grounds advanced in respect of some of the claims. It is unnecessary to consider them.

Legal principles

Abuse of process by collateral attack

[5] A "collateral attack" in this context is the bringing of a court proceeding which directly or indirectly challenges, or seeks to reopen aspects of, a final decision in an earlier court proceeding. A proceeding of this nature will in general be an abuse of process requiring the Court to strike out the new proceeding.

[6] The broad principle underlying this was discussed by Lord Wilberforce in *The Ampthill Peerage*[1] case as follows:

> English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. The principle which we find in the Act of 1858 is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved.

[7] *Hunter v Chief Constable of the West Midlands Police*[2] concerned an application to strike out a civil proceeding on the grounds that it was a collateral attack on a conviction in a criminal proceeding. The leading judgment was given by Lord Diplock. He began as follows:[3]

> My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.

---

[1] *The Ampthill Peerage* [1977] AC 547 (HL) at 569.
[2] *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL).
[3] At 536.

[8] Following a summary of the earlier criminal proceeding and of the civil proceeding contended to be a collateral attack, Lord Diplock said:[4]

> The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made.

[9] The principles apply in New Zealand.[5] *New Zealand Social Credit Political League Inc v O'Brien*[6] involved a collateral attack on an earlier civil proceeding. Somers J said:[7]

> Estoppel per rem judicatam, issue estoppel, and abuse of process in at least one of its manifestations, may be seen as exemplifying similar concepts – that a matter once determined may not be again litigated, that a matter which could and should have been raised in proceedings which have been determined should not be allowed to be raised subsequently, and that a collateral attack upon a final decision in other proceedings will not be permitted. The dual objects are finality of litigation and fair use of curial procedures.

No reasonably arguable cause of action

[10] The general principles are well settled: see *Attorney-General v McVeagh*;[8] *Attorney-General v Prince*;[9] *Couch v Attorney-General.*[10] They are summarised in *McGechan on Procedure* as follows:[11]

> (a) Pleaded facts, whether or not admitted, are assumed to be true. This does not extend to pleaded allegations which are entirely speculative and without foundation.
>
> (b) The cause of action for defence must be clearly untenable. In *Couch* Elias CJ and Anderson J, at [33], said: "It is inappropriate to strike

[4] At 541.
[5] See, for example: *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 (CA); *New Zealand Social Credit Political League Inc v O'Brien* [1984] 1 NZLR 84 (CA); *Lai v Chamberlains* [2006] NZSC 70, [2007] 2 NZLR 7.
[6] Ibid.
[7] At 95.
[8] *Attorney-General v McVeagh* [1995] 1 NZLR 558 (CA) at 566.
[9] *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) at 267.
[10] *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].
[11] Andrew Beck and others *McGechan on Procedure* (looseleaf ed, Brookers, updated to 5 July 2011) at HR15.1.02(1).

out a claim summarily unless the court can be certain that it cannot succeed."

(c) The jurisdiction is to be exercised sparingly, and only in clear cases. This reflects the Court's reluctance to terminate a claim or defence short of trial.

(d) The jurisdiction is not excluded by the need to decide difficult questions of law, requiring extensive argument.

(e) The Court should be particularly slow to strike out a claim in any developing area of the law, perhaps particularly where a duty of care is alleged in a new situation. In *Couch*, at [33], Elias CJ and Anderson J said: "Particular care is required in areas where the law is confused or developing." There is considerable authority that developments in negligence need to be based on proved rather than hypothetical facts.

Judicial immunity

[11] In *Gazley v Lord Cooke of Thorndon*[12] Eichelbaum CJ and Henry J[13] approved the following statements of the general principles of judicial immunity in *Halsburys Laws of England*.[14]

> 212. Persons protected. Persons exercising judicial functions in a court are exempt from all civil liability whatsoever for anything done or said by them in their judicial capacity, nor can any action be brought against the Crown in respect of acts or omissions of persons discharging responsibilities of a judicial nature or in connection with the execution of judicial process. A further protection arises from the rule that the record of a court of record cannot, if subsisting and valid upon its face, be traversed in any action against the judge of that court.
>
> . . .
>
> 216. Nature of protection. Wherever protection of the exercise of judicial powers applies, it does not matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice. The protection applies provided the judge acts in the bona fide exercise of his office and in the belief (though mistaken) that he has jurisdiction.

[12] The judgments in *Gazley* discuss the extent of the judicial immunity of superior court Judges, by reference to previous authority in New Zealand, England

---

[12] *Gazley v Lord Cooke of Thorndon* [1999] 2 NZLR 668 (CA).
[13] At 671 and 678-679 respectively. There is a concurring judgment of Keith J also discussing the principles of judicial immunity.
[14] Now at *Halsbury's Laws of England* (4th ed, reissue, 2001) vol 1(1) Administrative Law at 5(2)(i) [197] and [201].

and Wales, and elsewhere. It is unnecessary in this case to expand on the statements in *Halsbury*.[15]

The earlier proceedings and judgments referred to in the present claims

[13] All of the claims are concerned with earlier proceedings in and decisions of the New Zealand High Court, Court of Appeal and Supreme Court in which Mr Siemer was a party. Some other matters are referred to in the claims, but these are generally matters relating to or arising out of the court proceedings leading to the various decisions, or arising out of the decisions themselves. For the purposes of this judgment it is appropriate to set out reasonably fully the background to and course of the earlier proceedings. It is convenient to put the proceedings into different groups. I give each group a label for ease of reference. The labels are the sub-headings which follow.

The defamation proceeding

[14] This is a defamation proceeding commenced in the High Court in 2005 against Mr Siemer and two other parties by the firm of Ferrier Hodgson and Mr Michael Stiassny of that firm: *Ferrier Hodgson & Stiassny v Siemer & Ors.*[16] A substantial part of the summary in the following paragraphs is taken from summaries in two Court of Appeal decisions.[17] In citations of decisions I have included the date the judgment was delivered in all cases because the date of delivery is a relevant part of the factual background.

[15] Between December 2000 and July 2001 Mr Stiassny was receiver of Paragon Services Limited, a company of which Mr Siemer had been managing director and

---

[15] Other leading authorities in New Zealand include: *Nakhla v McCarthy* [1978] 1 NZLR 291 (CA) and *Harvey v Derrick* [1995] 1 NZLR 314 (CA).

[16] *Ferrier Hodgson & Stiassny v Siemer & Ors* HC Auckland CIV 2005-404-1808. The first plaintiff's name was later changed to Korda Mentha Ltd and there are later judgments with that name.

[17] *Siemer v Solicitor-General* [2009] NZCA 62, [2009] 2 NZLR 556 (CA), 9 March 2009. This was an appeal against a decision in another proceeding, but a related proceeding, described below under the heading "Contempt proceeding 3". The second Court of Appeal judgment is *Siemer v Stiassny & Korda Mentha* [2009] NZCA 624 (CA543/2009, 22 December 2009). This is a judgment on an application by Mr Siemer for an extension of time to commence a fresh appeal from the High Court's judgment on the defamation claim.

was a shareholder. The receivership was triggered by a dispute between shareholders in the company and followed upon Mr Siemer's application. During the receivership and thereafter Mr Siemer was critical of Mr Stiassny's actions as receiver. Ultimately those differences were compromised by an agreement they concluded on 9 August 2001. One of the provisions of the compromise agreement provided that neither Paragon nor Ferrier Hodgson, nor their respective directors, employees or agents, would make any comment to any party about the receivership of Paragon, with some limited exceptions.

[16] Subsequently, Mr Siemer complained about Mr Stiassny to various bodies including the Society of Accountants. A billboard then appeared in central Auckland which depicted an image of Mr Stiassny's face and contained the words "Michael Stiassny – a true story www.stiassny.org". That website contained material relating to the Paragon receivership and was also very critical of Mr Stiassny and his firm.

[17] Mr Stiassny and his firm then brought the defamation proceeding. They also applied *ex parte* for an interim injunction restraining the appellant from publishing any information relating to the respondents and directing him to remove the billboard and certain material from the website. On 8 April 2005, Winkelmann J granted the application.

[18] Mr Siemer then applied to have the ex parte injunction rescinded. On 5 May 2005, after a full hearing, Ellen France J rescinded the orders made by Winkelmann J. In their place she granted a new interim injunction (the interim injunction) directing Mr Siemer, Paragon, and their servants, contractors or agents, not to publish in any form a range of particularised information and not to reinstate the billboard.

[19] Mr Siemer unsuccessfully appealed against the decision of Ellen France J granting the interim injunction.[18]

[20] On discovering that the website had been reactivated, Mr Stiassny and his firm sought an order for Mr Siemer's committal on the ground that he was in

[18] *Siemer v Ferrier Hodgson* CA87/05, 13 December 2005.

contempt. After a four day hearing, Potter J held, in a judgment dated 16 March 2006, that entries in the website breached the interim injunction and also the ex parte interim injunction granted by Winkelmann J. Potter J also found that there had been other breaches arising from the distribution of "stickers" and from other communications. Mr Siemer was found to be in contempt of court. A fine of $15,000 was imposed. Mr Siemer was ordered to pay the plaintiffs' costs on a solicitor-client basis. In a further judgment dated 2 June 2006 costs and disbursements were fixed at approximately $183,000. The fine was paid. The costs were not paid. Potter J also directed that further applications filed by Mr Stiassny and his firm, including one for an order that Mr Siemer be debarred from defending the proceeding, lie in Court with leave reserved to them to apply for such relief, in the event of evidence becoming available that the injunction had again been breached. Mr Siemer appealed against the decisions. The appeal was dismissed.[19] An application for leave to appeal to the Supreme Court was dismissed.[20] I refer to this part of the defamation proceeding as "contempt proceeding 1".

[21] On 26 April 2007, Ferrier Hodgson and Mr Stiassny alleged that Mr Siemer had further breached the interim injunction. They applied for his committal and for other orders. Mr Siemer did not respond formally to the application by way of a notice of opposition and affidavits in support. Instead, he advised the Registry that he would be overseas and unavailable for the allocated fixture. No formal application for an adjournment was filed and the fixture proceeded in his absence.

[22] By judgment dated 9 July 2007 Potter J found Mr Siemer in contempt of court and granted leave to the respondents to issue a writ of arrest to bring him before the Court.[21] The Judge also made an order debarring the appellant from defending the proceeding until further order of the Court. She did so on the basis that Mr Siemer had deliberately continued breaching the interim injunction and was refusing to pay costs awards against him, despite having the means to do so. Mr Siemer did not appeal against this judgment.

---

[19] *Siemer v Stiassny* [2007] NZCA 117, [2008] 1 NZLR 150 (CA), 4 April 2007.
[20] *Siemer v Stiassny* [2007] NZSC 53 (SC26/2007, 12 July 2007).
[21] *Ferrier Hodgson v Siemer* HC Auckland CIV-2005-404-1808, 9 July 2007.

[23] A writ of arrest was issued and on 13 July 2007 Mr Siemer was brought before the High Court. In her judgment of that date (at [23]) Potter J described Mr Siemer's breaches of the injunctions as "serious, continuous, deliberate and contumacious".[22] She imposed a term of imprisonment of six weeks. Mr Siemer did not appeal against the sentence and served it. I refer to this as "contempt proceeding 2".

[24] The substantive defamation claim was heard on 8 October 2008 by Cooper J. Cooper J, as earlier noted, is named as a defendant in claim 5. Judgment was delivered on 23 December 2008. As a consequence of the debarring order, the hearing proceeded by way of formal proof. Mr Siemer did not appear and was not represented. Cooper J held that the plaintiffs' claims had been made out. He awarded Mr Stiassny $825,000 on the defamation claim, being $650,000 general damages, $150,000 aggravated damages and $25,000 exemplary damages, and Ferrier Hodgson $75,000 on the defamation claim and $20,000 on the claim for breach of the settlement agreement. He also granted a permanent injunction prohibiting the defamatory publications.

[25] Between the date of the hearing and delivery of Cooper J's judgment, Mr Siemer was adjudicated bankrupt.[23]

[26] Mr Siemer lodged an appeal against Cooper J's judgment. It became necessary for Mr Siemer to seek an extension of time to commence a fresh appeal. Mr Siemer appeared on his own behalf (as he generally did at most hearings in the various proceedings). The Court of Appeal appointed Mr R E Harrison QC as counsel to assist the Court. Mr Siemer was granted leave to lodge a new appeal, but an application by the respondents to strike out was granted in part. The result was that Mr Siemer had leave to appeal on the quantum of damages. There was no order for security for costs and there was no award of costs for either party.[24] Mr Siemer applied for leave to appeal to the Supreme Court against the decision of the Court of Appeal. The application was dismissed.[25]

---

[22] *Ferrier Hodgson v Siemer* HC Auckland CIV-2005-404-1808, 13 July 2007 at [23].
[23] *Korda Mentha v Siemer* HC Auckland CIV-2007-404-7675, 6 November 2008.
[24] *Siemer v Stiassny & Korda Mentha* [2009] NZCA 624 (CA453/2009, 22 December 2009).
[25] *Siemer v Stiassny* [2010] NZSC 57 (SC8/2010, 20 May 2010).

[27] The Court of Appeal dismissed Mr Siemer's substantive appeal by judgment dated 30 March 2011.[26] Mr Siemer sought leave to appeal to the Supreme Court. The application was dismissed on 3 June 2011.[27]

[28] On 29 July 2010 Cooper J struck out an application by Mr Siemer to set aside the permanent injunction. Mr Siemer applied to the Court of Appeal for an extension of time to file an appeal against that order. The application was dismissed.[28] Mr Siemer applied for leave to appeal to the Supreme Court. That application was dismissed on 9 May 2011.[29]

[29] The total of judgments in the defamation proceeding, contempt proceeding 1 and contempt proceeding 2 appear to be not less than: 15 in the High Court, 10 in the Court of Appeal and 5 in the Supreme Court.

Contempt proceedings 1 and 2

[30] These "proceedings" were part of the defamation proceeding and have been described above. They are identified separately for ease of reference because Mr Siemer specifically challenges the contempt proceedings and because there have been two further contempt proceedings against Mr Siemer which are challenged in one or more of the present claims. The two further contempt proceedings are described under the sub-headings that follow.

Contempt proceeding 3

[31] In July 2007, following Potter J's decision in contempt proceeding 2, staff at the Crown Law Office began monitoring three websites. Having concluded that material on those websites constituted further breaches by Mr Siemer of the interim injunction, the Solicitor-General applied to the High Court on 29 January 2008 for

[26] *Siemer v Stiassny* [2011] NZCA 106 (CA826/2009, 30 March 2011).
[27] *Siemer v Stiassny* [2011] NZSC 63 (SC49/2011, 3 June 2011).
[28] *Siemer v Stiassny* [2010] NZCA 607 (CA692/2010, 14 December 2010).
[29] *Siemer v Stiassny* [2011] NZSC 47 (SC8/2011, 9 May 2011).

Mr Siemer to be held in contempt of court, to be committed to prison, and to remain there until further order of the Court.[30]

[32] The Solicitor-General's application was heard by a full Court of the High Court (Chisholm and Gendall JJ) on 16 and 17 June 2008. In a judgment delivered on 8 July 2008 Mr Siemer was found in contempt. The Court declined the Solicitor-General's application for committal to prison until the contempt was purged. There was an order that Mr Siemer be committed to prison for six months with a further order that the writ of arrest and order of committal to be suspended pending further order of the Court to give Mr Siemer an opportunity to purge the contempt before 1 August 2008. The application was therefore adjourned for further hearing on 1 August 2008. On that date Mr Siemer did not appear. The Court received affidavits to the effect that the offending material on the websites remained. There was then an order that the warrant for arrest be activated and that Mr Siemer be committed to prison for six months.

[33] Mr Siemer applied to the Court of Appeal for an order for stay of the committal order. The application for stay should have been directed to the High Court, but the Court of Appeal assessed it on its merits. The application was declined by judgment dated 16 September 2008.[31] An application for leave to appeal to the Supreme Court on the refusal of the stay was declined by the Supreme Court.[32]

[34] During the High Court hearing on 16 and 17 June Mr Siemer applied for trial by jury on the contempt application. This was declined. Mr Siemer appealed against that ruling. He applied to the High Court for bail pending the hearing of the appeal. This was declined by the High Court. An appeal against the refusal of bail was allowed by the Court of Appeal.[33]

[35] The Court of Appeal heard the substantive appeal on 3 December 2008 and delivered judgment on 9 March 2009.[34] The Court appointed Mr R E Harrison QC

---

[30] *Solicitor-General v Siemer* HC Auckland CIV-2008-404-472.
[31] *Siemer v Solicitor-General* [2008] NZCA 369 (CA447/2008, 16 September 2008).
[32] *Siemer v Solicitor-General* [2008] NZSC 80 (SC63/2008, 17 October 2008).
[33] *Siemer v Solicitor-General* [2008] NZCA 438 (CA447/2008, 22 October 2008).
[34] *Siemer v Solicitor-General* [2009] NZCA 62, [2009] 2 NZLR 556 (CA) (CA447/2008, 9 March 2009).

as amicus curiae and Mr Harrison presented full argument. Although in form the appeal was against the trial by jury ruling, the Court treated the appeal as a general appeal against the substantive High Court decisions and several rulings made in the course of the proceeding in the High Court.[35] The Court held that there was no entitlement to trial by jury, but modified the terms of the committal.

[36] Mr Siemer applied for leave to appeal to the Supreme Court against this decision.[36] Bail was continued. Leave to appeal was granted.[37] Mr Siemer, who was represented by senior counsel, then applied for an order that the Chief Justice not sit at the Supreme Court hearing of the appeal. The reasons for the application are set out in the Supreme Court's judgment on the application, which was dismissed.[38]

[37] The Supreme Court delivered its judgment on the substantive appeal on 17 May 2010.[39] The order of the Court of Appeal was quashed and replaced by an order committing Mr Siemer to prison for a term of a maximum of three months with a proviso that the term of imprisonment would come to an immediate end if Mr Siemer complied with the injunction.

Contempt proceeding 4

[38] This proceedings stands apart from the proceedings so far described. An aspect of this proceeding is the subject matter of claim 4.

[39] In a criminal proceeding, *R v Bailey*,[40] a suppression order was made in the High Court on 8 September 2009 in respect of a judgment in that proceeding. Nine days later, on 17 September 2009, Mr Siemer published an article on two websites in which he made reference to several matters in the judgment. He did so notwithstanding the fact that the Judge had directed that the judgment was to be suppressed from publication to protect the accused in the event the matter went to

[35] Ibid at [6]-[7].
[36] *Siemer v The Solicitor-General* [2009] NZCA 83 (CA447/2008, 17 March 2009).
[37] *Siemer v The Solicitor-General* [2009] NZSC 86 (SC48/2009, 7 August 2009).
[38] *Siemer v The Solicitor-General* [2010] NZSC 12 (SC48/2009, 1 March 2010).
[39] *Siemer v The Solicitor-General* [2010] NZSC 54, [2010] 3 NZLR 767 (SC48/2009, 17 May 2010).
[40] *R v Bailey* HC Auckland CRI-2007-085-7842, 8 September 2009.

trial. The Solicitor-General considered the publication was in breach of the suppression order. The Solicitor-General applied to the High Court for an order directing Mr Siemer to remove the material. By judgment dated 9 October 2009 Winkelmann J held that the publication by Mr Siemer was in breach of the existing Court orders. An order was made directing him to remove all of the material over which he had control from all of the websites.[41] There was no appeal against this decision.

[40] Because the material remained on the websites the Solicitor-General brought contempt proceedings and sought costs.[42] This is "contempt proceeding 4".

[41] Preliminary applications, and timetabling orders, were dealt with by Keane J. In providing context for the matters he was dealing with, Keane J noted the following, after reference to some preliminary directions that had already been made by Courtney J:[43]

> [9] Mr Siemer has not complied with those directions. Since 22 October 2009 he has filed three memoranda, in the first of which, dated 26 October 2009, in response to Courtney J's minute, he criticised her conduct of the hearing on 22 October, and the decisions she made, and questioned her neutrality. In that memorandum Mr Siemer contended he had a right under the High Court Rules to file a counterclaim without leave.
>
> [10] On 28 October 2009 Venning J issued a minute in which he said that while he did not accept that there was any merit in Mr Siemer's objections to Courtney J presiding, today's hearing would not be before her. He made it clear that it would proceed whether or not Mr Siemer chose to appear, and that orders affecting his position might still be made. …

Mr Siemer did not appear at the hearing. And he was not represented by counsel although he stated in one memorandum that he had engaged counsel. Keane J dealt fully with the various applications, including those of Mr Siemer, in two judgments dated 30 October 2009 and 2 November 2009.

---

[41] *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6243, 9 October 2009.
[42] *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6747.
[43] *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6747, 30 October 2009.

[42] The Solicitor-General's application was to have been heard in the High Court on 16 November 2009. What occurred on that date is described in a judgment of Lang J of 26 February 2010.[44]

> [2] The Solicitor-General's application was set down for hearing before me on Monday 16 November 2009. When the case was called, counsel for the Solicitor-General advised me that there had been a number of developments over the previous few days. These included discussions between the Solicitor-General's office and Mr Siemer that had resulted in Mr Siemer deleting several portions of the article that he had placed on his websites regarding the Bailey pre-trial matters. Counsel for the Solicitor-General advised me that the Solicitor-General took the view that the information on the websites no longer contravened the orders that Winkelmann J had made. For that reason, and provided Mr Siemer was prepared to sign an undertaking not to breach the suppression orders in the future, the Solicitor-General would seek leave to discontinue the proceeding.
>
> [3] I then adjourned the hearing briefly so that I could consider the article in its edited form. Having done so, I held residual concerns that the deletions that Mr Siemer had made to the article were not sufficient to prevent the article from remaining in breach of the suppression orders that Winkelmann J had made. When the hearing resumed, I raised my concerns with counsel for the Solicitor-General. She advised me in response that the Solicitor-General was satisfied that the article no longer contravened the orders that Winkelmann J had made. She also confirmed that Mr Siemer had signed a written undertaking not to breach the suppression orders in the future. This was in the following terms:
>
> > I, Vincent Ross [Siemer], undertake:
> >
> > 1. That I understand the scope and meaning of the suppression order of Her Honour Winkelmann J (as set out in the re-issued decision of Her Honour dated 7 October 2009 in the matter of R V Bailey and others (CRI 2007-085-007842 and others)), as agreed by the Solicitor-General in discontinuing proceedings today based on the current form of the article; and
> >
> > 2. That I will not breach the order referred to above, and that I will not be a party to a breach, in any form.
> >
> > [Vince Siemer] 16/11/09
>
> [4] The court has a vital interest in ensuring that its orders are obeyed. It was for that reason that I raised the issue of the adequacy of the deletions with counsel for the Solicitor-General. Once she confirmed the Solicitor-General's satisfaction with the situation, however, I did not take the matter further. I granted the Solicitor-General leave to discontinue the proceeding and reserved the issue of costs. That is the issue that I am now required to resolve.

[44] *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6747, 26 February 2010.

[43] Lang J then proceeded to consider whether the Solicitor-General was entitled to costs, notwithstanding discontinuance of his proceeding, Mr Siemer's submissions in opposition, and Mr Siemer's own application to recover disbursements from the Solicitor-General. The Judge concluded, having traversed the history of the proceedings and the relevant rules, that the Solicitor-General was entitled to indemnity costs.

[44] The Solicitor-General had provided a figure for indemnity costs, disbursements and travel expenses, but without particulars. The Judge directed the Solicitor-General to file a further memorandum setting out the basis on which the costs had been calculated, with time for a response from Mr Siemer. A memorandum for the Solicitor-General was filed. There was no memorandum from Mr Siemer. An order as to the quantum was made in a judgment dated 24 March 2010.

[45] Mr Siemer appealed against the order to pay indemnity costs. The appeal was dismissed.[45] Mr Siemer applied for leave to appeal to the Supreme Court. This application was dismissed.[46] The Supreme Court's reasons were as follows:

> [4] The proposed appeal is unarguable. Mr Siemer was held to be in breach of the High Court's order for suppression and seems to have acted with deliberation in publishing the material. The costs order was permissible in terms of the High Court Rules. Although Mr Siemer has not been held to be in contempt on this occasion, he has been held to be in breach of a court order and, if he had not removed the particular portions of the websites, he would surely have been found to be in contempt. Mr Siemer elected to sign an undertaking which implicitly admitted the weakness of his position. The Solicitor-General then took the sensible course of discontinuing the contempt application as his objective had been achieved but signalled at the time that costs would still be pursued.
>
> [5] The award of indemnity costs was well open to the High Court. The allegation of bias against the Judge, made simply on the basis that he made an inquiry of Crown counsel about whether the excisions made the websites comply with the suppression order, has no basis. It seems that the Judge had been invited to consider this question by counsel but, in any event, the Court had necessarily to satisfy itself that its own order was now being complied with.

[45] *Siemer v Solicitor-General* [2010] NZCA 549 (CA126/2010, 23 November 2010).
[46] *Siemer v Solicitor-General* [2011] NZSC 4 (SC116/2010, 7 February 2011).

In a further application to the Supreme Court, made through counsel, Mr Siemer applied for recall of the Supreme Court's judgment of 7 February 2011. The grounds for that application are recorded in the Supreme Court's judgment dismissing the application.[47]

Prior strike out applications

[46] I am aware of three previous proceedings commenced by Mr Siemer in which he advanced claims relating to or arising out of one or more of the defamation proceedings and contempt proceedings 1, 2 and 3. All three of these proceedings have been struck out. These are noted under the following sub-headings.

First prior strike out

[47] In January 2008 Mr Siemer commenced proceedings against Mr Stiassny, Ferrier Hodgson and the Attorney-General.[48] All three defendants applied for orders striking out the claims. Two days before the hearing Mr Siemer filed an amended statement of claim and added three further defendants – the Solicitor-General, the Judicial Conduct Commissioner and the Chief Justice. This claim challenged the conduct of hearings, the conduct of Judges, and judgments, as well as the conduct of others in or related to, the defamation proceeding generally, contempt proceeding 1, contempt proceeding 2, and the issuing of contempt proceeding 3.

[48] The proceeding was struck out in its entirety by Harrison J.[49] The Judge said:

> [6] Mr Siemer's documents are in essence a lengthy and discursive litany of personal attacks on the integrity, fitness for office and competence of a number of Judges of this Court, the Court of Appeal and Supreme Court who have previously delivered or participated in the delivery of judgments adverse to him. …
>
> [7] A cursory reading of Mr Siemer's documents proves the points advanced in argument by Mr Miles QC for Mr Stiassny and Ferrier Hodgson and Mr Sinclair for the Crown. The documents seek to raise again for argument issues which are already the subject of judicial determination.

[47] *Siemer v Solicitor-General* [2011] NZSC 32 (SC116/2010, 1 April 2011).
[48] *Siemer v Stiassny* HC Auckland CIV-2008-404-0104.
[49] *Siemer v Stiassny* HC Auckland CIV-2008-404-0104, 20 March 2008.

> They seek the collateral advantage of re-litigating complaints under the new guises of allegations of conspiracy, breach of the New Zealand Bill of Rights Act etc. To that extent they stem from an improper motive and are themselves an abuse of process.
>
> …
>
> [11] The defendants are entitled to costs. It is obvious that this proceeding was hopeless from its inception. Costs are awarded against Mr Siemer to Mr Stiassny, Ferrier Hodgson and Co and to the Attorney-General separately on an indemnity basis; that is, reasonable solicitor/client costs.

Second prior strike out

[49] In October 2008 Mr Siemer filed a claim in the High Court at Auckland with himself as first plaintiff and his wife as second plaintiff.[50] The defendants were all of the parties named as defendants in the proceeding struck out by Harrison J. The Solicitor-General applied to strike out the claim. One of the grounds was that it was an abuse of process as a collateral attack.

[50] The claim was directed primarily to the defamation proceeding and contempt proceedings 1, 2 and 3. There were five causes of action: (1) conspiracy to pervert or defeat the course of justice by all defendants; (2) misfeasance in public office by the Attorney-General, the Solicitor-General, the Judicial Conduct Commissioner and the Chief Justice; (3) violation of the human rights of Mr and Mrs Siemer by the Attorney-General, the Solicitor-General, the Judicial Conduct Commissioner and the Chief Justice; (4) conspiracy to injure by unlawful means by all defendants; and (5) malicious prosecution by the Solicitor-General for initiating and prosecuting contempt proceeding 3.

[51] The proceeding was struck out by Winkelmann J by judgment dated 30 November 2009. She said:

> [10] The Solicitor-General's alternative argument is that the claim when viewed overall is a collateral attack on the outcome and processes involved in each of the various proceedings identified above. The proper course for such allegations to be investigated is via the appeal process. The plaintiff has pursued and is still pursuing this course. The only claims that would not be covered by this submission are the allegations of malicious prosecution

[50] *Siemer v Stiassny* HC Auckland CIV-2008-404-6822.

against the Solicitor-General, and misfeasance in public office (if this is taken as linked to the allegation in relation to the search warrant). But the Solicitor-General says the malicious prosecution claim has no prospect of success since the contempt allegation has been upheld, and it was an allegation of civil, not criminal contempt. In relation to misfeasance in respect of the search warrant, it is argued that the factual matters pleaded there are so wholly without foundation that the cause of action should be struck out.

…

[17] There can be no doubt that the current proceeding amounts to an attempt to revisit previous proceedings in which Mr Siemer has been involved, or had an interest. He does so because the proceedings have been largely determined against him, or against his interests as he perceives them. As should be clear from the description of this proceeding, the vast bulk of the allegations contained in the statement of claim concern actions taken by the first, second and fourth defendants and various judicial officers in the course of the previous proceedings. As the Solicitor-General says:

> The plaintiff's assertion is that the judgments in those cases, including the injunctions and subsequent contempt proceedings were procured and maintained by the mendacity of the first and second defendants, and persistent dereliction of duty by the Judges involved in them, the Solicitor-General and the Judicial Conduct Commissioner.

[18] These proceedings are, on any view, a collateral attack on the outcome and processes involved in those proceedings. If Mr Siemer had concerns about the actions of the litigants and decisions of the judicial officers, then the appropriate course was for him to pursue those through the appeal processes. To the extent that Mr Siemer believed there had been judicial misconduct, then the appropriate forum for those concerns was through the Judicial Conduct Commissioner. Mr Siemer describes in his pleading occasions where he has pursued those avenues of redress, and his displeasure with the outcome. It may be that he has not obtained the outcome he was hoping for, but even if that is so, it is not open to him to commence further proceedings to relitigate the issues. Once all avenues of appeal or judicial review are exhausted, then there must be an end to proceedings.

Winkelmann J also held that various claims in any event could not succeed.

[52] On 16 October 2008, shortly after Mr Siemer had filed the proceeding, Priestley J made directions that it be served on the Solicitor-General only and that the Solicitor-General act to ensure that the interests of the Attorney-General, the Judicial Conduct Commissioner and the Chief Justice were protected in accordance with the Solicitor-General's obligations. On 28 October 2008 and 26 and 27 November 2008 case management directions were issued by Associate Judge Doogue. On 16 January 2009 Mr Siemer filed an appeal against the direction of

Priestley J and the case management directions. The appeal was lodged out of time. On 1 December 2009 the Court of Appeal heard an application for an extension of time. Mr R E Harrison QC was appointed as amicus curiae. An extension of time for appealing was granted with observations on the fact that by the date of this decision the proceeding had been struck out by Winkelmann J.[51]

[53] Mr Siemer also appealed against Winkelmann J's decision. On 27 October 2010 the Court of Appeal heard this appeal together with the earlier appeal against the direction of Priestley J and the case management matters. Judgment was delivered on 3 February 2011.[52] The Court of Appeal held that the proceeding was properly struck out in its entirety, but without prejudice to the Siemers' right to pursue one claim against the Attorney-General arising out of the search of their home. The Court agreed with Winkelmann J's findings that the claims were an abuse of process because they amounted to collateral attack, that some claims were untenable, and that the claim against the Chief Justice should in any event be struck out because of judicial immunity. The Court also held that Winkelmann J had properly struck out a claim against the Solicitor-General that he had wrongfully caused Police to obtain and execute the warrant to search the Siemers' home.

Third prior strike out

[54] On 29 March 2010 Mr Siemer filed a proceeding naming the Chief Justice as the defendant.[53] Claim 1, in which the Chief Justice is also named as a defendant, had been filed on 17 December 2009. An amended statement of claim in the March 2010 proceeding records that the Chief Justice was "being sued in relations [sic] to alleged breaches by Crown Judicial Officers (herself included) in their official capacity".

[55] The statement of claim contains a recital of proceedings in, and decisions of the High Court, Court of Appeal and Supreme Court in, the defamation proceeding, contempt proceeding 2 and contempt proceeding 3. It is then contended that Mr

[51] *Siemer v Stiassny* [2009] NZCA 571 (CA454/2009, 7 December 2009).
[52] *Siemer v Stiassny* [2011] NZCA 1 (CA718/2010, 3 February 2011). (The judgment is misdated 2010.)
[53] *Siemer v Chief Justice of the New Zealand Supreme Court* [sic] HC Auckland CIV 2010-404-1909.

Siemer's rights to the observance of the principles of natural justice were infringed in two main respects.

[56] It is alleged, firstly, that nine particularised decisions in the defamation proceeding and in contempt proceedings 2 and 3 demonstrated "the singular and cumulative effect of the Judges' deprivation of natural justice" to which Mr Siemer was entitled. Mr Siemer further alleged that he was deprived of his right to an impartial Judge because he had "been the unfortunate victim of judges with certain conflicts making discretionary orders against him – and then their fellow judges covered up these conflicts". Reference is then made to decisions of particular Judges in the course of the defamation proceeding and contempt proceeding 3. There is a claim for general damages of $1,486,000, of which $920,000 is the total of damages awarded to the plaintiffs in the defamation proceeding and $230,000 is a total of costs awarded against Mr Siemer.

[57] An application was made on behalf of the Chief Justice to strike out the claim. By judgment dated 11 February 2011 the claim was struck out by Andrews J. It was struck out primarily on the grounds that it was an abuse of process as a collateral attack on final decisions in the earlier proceedings. The Judge was also satisfied that the claim founded on breach of the right to natural justice could not succeed.

Claims 1 to 5 : the causes of action and contentions

[58] The purpose of this section is to provide an outline of the claims. Some further particulars of the claims are noted in the final sections of this judgment, when discussing the strike out claims. But a comprehensive summary of the pleadings in each of the five claims is not required.

[59] Some of the claims refer to matters outside the court proceedings which have been discussed to this point; that is to say, outside the defamation proceeding, contempt proceedings 1, 2 and 3, and the prior strike outs. The fact that these further matters are referred to does not have a material bearing on the applications to strike out. I will touch on these further matters in my conclusion.

Claim 1

[60] This is the claim against the Attorney-General and the Chief Justice. There are two causes of action. The first alleges "violation of legal rights enshrined in s 3, s 6, s 14 and s 27 of the New Zealand Bill of Rights Act 1990, as well as Article 2 of the U.N. [sic] Covenant on Civil and Political Rights". The essence of this cause of action is alleged violation of the right to freedom of expression in s 14 of the New Zealand Bill of Rights Act 1990, and the right to natural justice, and associated rights, in s 27 of that Act. The second cause of action alleges "unlawful discrimination under the Human Rights Act 1993 and the United Nation [sic] Covenant on Civil and Political Rights, Article 2".

[61] The violation of rights and the discrimination are alleged to have occurred in the course of the defamation proceeding, contempt proceedings 1, 2 and 3 and the first strike out proceeding. The matters challenged are, in broad terms, the conduct of Court hearings, decisions made in the course of Court hearings and judgments delivered following the hearings, in the High Court, the Court of Appeal and the Supreme Court.

[62] On the first cause of action Mr Siemer claims general damages of $1,500,000, compensation of $100,000 for "unjust incarceration at Mt Eden Prison",[54] and exemplary or aggravated damages of $1,200,000. On the second cause of action there are claims for general damages and exemplary damages of $976,000 in each case. The damages are quantified in considerable measure by reference to the damages and costs Mr Siemer was ordered to pay in the defamation proceeding.

Claim 2

[63] This is one of the two claims against the Solicitor-General. It is directed to contempt proceedings 3 and 4. There are three causes of action as follows:

[54] This is a reference to Mr Siemer's committal to prison for contempt.

(a) The first cause of action is called "'Abuse of Court process". It is alleged that it was an abuse of process for the Solicitor-General to commence and prosecute contempt proceedings 3 and 4.

(b) The second cause of action alleges breach of Mr Siemer's rights pursuant to s 14 of the New Zealand Bill of Rights Act 1990 (freedom of expression) and Article 19 of the International Covenant on Civil and Political Rights. It is alleged that Mr Siemer's right to freedom of expression was wrongfully breached by the Solicitor-General's commencing and prosecuting contempt proceedings 3 and 4.

(c) The third cause of action is described as "harassment". It is alleged that the Solicitor-General harassed Mr Siemer by investigations initiated by him prior to commencement of contempt proceeding 3; in that he "orchestrated" a police raid on the plaintiff's home in February 2008, after defence proceeding 3 was issued; and by steps taken in court in the course of contempt proceeding 3.

[64] On each cause of action there are claims for general damages of $1,000,000, compensation for "unjust incarceration at Mt Eden Prison" in the sum of $100,000, and exemplary or aggravated damages of $1,200,000.

Claim 3

[65] This is the second claim against the Solicitor-General. It is directed to contempt proceeding 3. Claim 2 is also directed to contempt proceeding 3 (as well as contempt proceeding 4). Claim 3 has a different factual focus in respect of contempt proceeding 3. However, in substance the contentions are the same.

[66] There is a cause for "breach of s 14 of the New Zealand Bill of Rights Act 1990 and the International Covenant on Civil and Political Rights". Particulars that follow this include a contention that the publications by Mr Siemer, which led to contempt proceeding 3, were "accurate and lawful". I will set out some of the

pleadings verbatim. These provide an illustration, in broad terms, of many of the pleadings in all of the claims, as well as providing specific examples for claim 3:

> …
>
> 32. The [Solicitor-General] prosecuted [Mr Siemer] for alleged active breaches of the injunction ... even though he knew there were no active breaches.
>
> ...
>
> 35. At the time [the Solicitor-General] filed his prosecution of [Mr Siemer] for alleged breach of the injunction, he reasonably knew that the Court injunction order was suppressing accurate and lawful information - and, consequently, that the injunction amounted to an unreasonable restriction on freedom of expression guarantees.
>
> ...
>
> 37. The evidence supports the [Solicitor-General's] aim was to quash lawful freedom of expression by waging an inappropriate legal war against [Mr Siemer] which threatened his financial welfare and his personal freedom.
>
> ...
>
> 39. The aim of the [Solicitor-General] was not to obtain compliance with a lawful order, but was a political action designed to financially cripple the plaintiff.
>
> ...

[67] There are claims for general damages of $920,000, damages for incarceration at Mt Eden Prison of $100,000 and exemplary or aggravated damages of $100,000.

Claim 4

[68] This is the claim against Lang J and the Attorney-General. It is directed to contempt proceeding 4. The cause of action is alleged violation of s 27 of the New Zealand Bill of Rights Act 1990 and Article 2 of the International Covenant on Civil and Political Rights. The particulars of alleged breach are directed to the hearing before Lang J on 16 November 2009. It is alleged, in essence, that Mr Siemer was denied his right to natural justice by the course taken by the Judge during the hearing. There is a claim for general damages of $35,000 and exemplary or aggravated damages of $20,000.

Claim 5

[69] This claim is directed to two aspects of the defamation proceeding: the hearing on the substantive claim before Cooper J on 8 October 2008 and Cooper J's judgment delivered on 23 December 2008. In respect of matters arising out of the hearing and the decision it is alleged that Mr Siemer's rights under s 27 of the New Zealand Bill of Rights Act 1990 and Article 2 of the International Covenant on Civil and Political Rights were violated. There is a claim for general damages of $920,000 expressly quantified as "an amount equal to the defamation award by" Cooper J. There is a further claim for exemplary or aggravated damages of $200,000.

Conclusion : abuse of process by collateral attack

[70] Claims 1 to 5 are an abuse of process. This is because the claims are, to adapt the words of Lord Diplock in *Hunter*,[55] a collateral attack upon final decisions against Mr Siemer made by courts of competent jurisdiction in previous proceedings in which Mr Siemer had a full opportunity of contesting the decision in the court by which it was made.

[71] The abuse of process by collateral attack is compounded by the fact that in some of the current claims Mr Siemer is reasserting matters that have already been struck out as an abuse of process for collateral attack.

[72] In expressing my conclusion in this way I am fully aware that some of Mr Siemer's contentions are directed to the fact that he was debarred from defending the defamation claim. This fact does not justify any qualification of the conclusion that there was an abuse of process by collateral attack. To conclude otherwise would mean that it is not an abuse of process for Mr Siemer to challenge a decision in an earlier proceeding which was made because Mr Siemer refused to comply with a final order made by the court in the earlier proceeding. In addition, it was not an absolute order. Mr Siemer was entitled to defend the defamation claim upon compliance conditions.

---

[55] As cited above at [7].

[73] I have also not overlooked the fact that Mr Siemer at various points in his pleadings alleges that some hearings proceeded "ex parte". To the extent that an order of relevance was made on an application without notice to Mr Siemer this does not, in relation to any of the proceedings in question, provide an answer to the conclusion that there is an abuse of process by collateral attack. What is more, some hearings referred to by Mr Siemer as having been conducted "ex parte" were hearings which Mr Siemer simply chose not to attend having been given notice of the hearing.

[74] As noted above at [59], some of the claims refer to matters outside the proceedings. This gives rise to a question whether these aspects of the claims should not be struck out. I will refer to these as "extraneous matters". I am satisfied that reference to extraneous matters does not require modification of an order for striking out the claims in their entirety; for example, by striking out parts of the pleadings only. There are several reasons for this conclusion.

[75] The first is that most of the extraneous matters do not provide a foundation for a claim that follows. In other words, they are irrelevant. Some other allegations fit broadly within the category of extraneous matters, but nevertheless have sufficient connection to one of the earlier proceedings now challenged to have required Mr Siemer, in the earlier proceeding, to have made his challenge then in accordance with the principles stated in *Henderson v Henderson*.[56] In claims 1 and 2 there are allegations relating to proceedings in Parliament. As well as being irrelevant to the claims that follow, these are not matters on which a court can adjudicate. Proceedings in Parliament, or in the House of Representatives, cannot be called into question in a court.[57]

[76] Another extraneous matter relates to the issue of the warrant to search Mr and Mrs Siemer's home, and the conduct of that search. The allegations in this regard are not ones which should be preserved in a current claim. As noted above at [53], these matters were addressed by the Court of Appeal in the second prior strike out

[56] *Henderson v Henderson* (1843) 3 Hare 100; 67 ER 313.
[57] Bill of Rights 1688 (UK), Article 9.

proceeding. A proceeding was subsequently issued by Mr Siemer relating to the search of his home.

[77] To the extent that there are other extraneous matters which might survive a strike out on the grounds of abuse of process for collateral attack, they do not survive strike out on the grounds that there is no reasonably arguable cause of action, as discussed below.

[78] The pleadings in the five claims amply illustrate the nature of one type of abuse of process. The pleadings make clear, often by express statement, that Mr Siemer simply does not accept the decisions against him. He asserts in respect of numerous decisions of the Courts that he is demonstrably right and the Courts were demonstrably wrong. The essence of Mr Siemer's reasoning as to why the Courts were wrong is simply his assertion that he is right.

Conclusion : no reasonably arguable cause of action

[79] As noted above at [4](b) strike out on this ground was pursued in respect of claims 1 and 2.

[80] In claim 1 it was submitted for the defendants that the cause of action founded on alleged breach of s 14 of the New Zealand Bill of Rights Act (freedom of expression) could not succeed. This was because, in essence, the restriction on Mr Siemer's freedom of expression which founded the claim arose from applications for court orders and the court orders themselves, such as the injunctions in the defamation proceeding and orders made in the contempt proceedings. The defence submission is undoubtedly correct. An action for breach of the general right of freedom of expression cannot be founded on a court order which in some way restricts expression. Freedom of expression is not an unfettered right.

[81] The second cause of action in claim 1 alleges unlawful discrimination under the Human Rights Act 1993 and the International Covenant on Civil and Political Rights, Article 2. The particulars of this claim are conveniently taken from a summary in the submissions for the defendants:

> 11. The particulars alleged here are that the New Zealand Court has discriminated against the plaintiff based upon financial means by demanding the plaintiff pay roughly $250,000 in "pre-hearing costs" and then debarring his defence (SOC para 42.1); by demanding a statement of personal financial position; and by allowing a new claim to replace an old unproven claim (SOC paras 42.2 and 43.0).
>
> 12. The plaintiff also alleges that Cooper J's finding against the plaintiff on the defamation claim juxtaposed words from different articles the plaintiff had written and positioning those words "in an egregious way" and that the resultant "quote" was a product of Cooper J's "deliberate perversion of the actual publications" manufactured to support unfounded allegations of racial hatred (SOC para 44.0).
>
> 13. The plaintiff claims that such remarks constitute a clear violation of discriminatory and racial disharmony provisions under ss 20 and 61 of the Human Rights Act 1993 and reaffirmed in s 19 of the NZBORA.

[82] This cause of action cannot succeed. There is no right of action for discrimination "based upon financial means", let alone such a right arising out of Court orders to pay costs and the other matters alleged in this regard by Mr Siemer. There is also no right of action under the Human Rights Act 1993 for alleged discrimination as a consequence of statements in a judgment. This is a conclusion of law. Addressing the law does not imply that Mr Siemer's allegations have any foundation in fact.

[83] None of the three causes of action in claim 2 can succeed. The first cause of action is "abuse of Court process". There is a tort of abuse of process where a lawful procedure has been invoked for an improper collateral purpose. The procedures challenged by Mr Siemer are contempt proceedings 3 and 4. The claim cannot succeed because there is no plausible foundation for an argument that either proceeding was brought for an improper collateral purpose. It cannot be argued in contempt proceeding 3 because the proceeding was successful. It cannot be argued in contempt proceeding 4 for two reasons. The first is that the settlement terms agreed to by Mr Siemer implicitly acknowledge that the Solicitor-General was justified in bringing the proceeding. The second is that the conclusion of Lang J confirmed that the Solicitor-General was justified in bringing the proceeding. Lang J's judgment was also upheld on appeal.

[84] The cause of action alleging violation of the right to freedom of expression cannot succeed for reasons already noted in respect of claim 1.

[85] The claim described as "harassment" cannot succeed. There is no tort of harassment recognised in New Zealand. To the extent that it has been considered as a tort in other jurisdictions, its existence and possible scope is uncertain.[58] This is not a developing area of law in New Zealand warranting caution before exercising the power to strike a proceeding out. Even if there was a basis for caution, because of faint indications of the possibility of development of such a tort, it could not extend to the commencement and prosecution of court proceedings which have succeeded.

Conclusion : judicial immunity

[86] The claims against the Chief Justice in claim 1, Lang J in claim 4 and Cooper J in claim 5 are struck out on the grounds of judicial immunity. The claim against the Chief Justice is also struck out because the Chief Justice cannot in any event be sued as representative of the judiciary as a whole.

Overall conclusion

[87] All claims are struck out in their entirety.

[88] The defendants, to the extent that they have incurred costs, are entitled to costs. If there is an application for costs a memorandum should be filed and served within four weeks of the date of this judgment. Any reply from Mr Siemer should be filed and served within a further four weeks.

Peter Woodhouse J

[58] See Stephen Todd (ed) *The Law of Torts in New Zealand* (5th ed, Brookers, Wellington, 2009) at 130-132.