

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

**CIV-2014-404-002439
[2014] NZHC 2291**

IN THE MATTER of an application to review Registrar's
decision

BY RAZDAN RAFIQ
Applicant

Hearing: (On the papers)

Judgment: 22 September 2014

**JUDGMENT OF VENNING J
Review of a Registrar's Decision**

This judgment was delivered by me on 22 September 2014 at 11.30 am, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Copy to: Applicant
Solicitor-General

[1] This is a review of a Registrar's decision to refer certain proceedings by Mr Rafiq to a Judge before accepting them for filing.

Brief background

[2] Mr Rafiq has issued numerous proceedings in this and other Courts. A search of the Court record discloses the following proceedings initiated by Mr Rafiq in this Court at Auckland:

CIV	NAME OF CASE	TYPE OF CASE	STATUS
CIV-2014-404-002152	Rafiq v The Commissioner of the New Zealand Police	General Proceedings - HC	Disposed
CIV-2014-404-002138	Rafiq v Meredith Connell	General Proceedings - HC	Active
CIV-2014-404-002088	Rafiq v Meredith Connell Law Firm of New Zealand	General Proceedings - HC	Active
CIV-2014-404-002006	Rafiq v Meredith Connell Law Firm of New Zealand	General Proceedings - HC	Active
CIV-2014-404-001988	Rafiq v The Secretary for the Department of Internal Affairs of New Zealand	General Proceedings - HC	Disposed
CIV-2014-404-001950	Rafiq v The Commissioner of the New Zealand Police	General Proceedings - HC	Active
CIV-2014-404-001893	Rafiq v Yahoo! New Zealand Limited	General Proceedings - HC	Active
CIV-2014-404-001837	Rafiq v The Commissioner of the New Zealand Police	General Proceedings - HC	Active
CIV-2014-404-001705	Rafiq v Special Broadcasting Corporation of Australia	General Proceedings - HC	Active
CIV-2014-404-001385	Rafiq v The Secretary for Internal Affairs	General Proceedings - HC	Disposed
CIV-2014-404-001084	Rafiq v The Director of Civil Aviation Authority of New Zealand	General Proceedings - HC	Closed
CIV-2014-404-001011	STAYED. NO SECURITY FOR COSTS paid - Rafiq v Media Works TV Ltd & MSN NZ Ltd	General Proceedings - HC	Disposed
CIV-2014-404-000816	Rafiq v Meredith Connell	General Proceedings - HC	Active
CIV-2014-404-000772	Rafiq v The Privacy Commissioner	General Proceedings - HC	Closed
CIV-2014-404-000662	Rafiq v The Chief	General Proceedings - HC	Closed

	Executive of the Ministry of Social Development		
CIV-2014-404-000147	Rafiq Razdan v Privacy Commissioner	General Proceedings - HC	Active
CIV-2014-404-000101	Rafiq v Google New Zealand Limited	General Proceedings - HC	Closed
CIV-2014-404-000073	Rafiq v The Commissioner of the NZ Police	General Proceedings - HC	Active
CIV-2013-404-005202	Rafiq v The Commissioner of New Zealand Police	General Proceedings - HC	Disposed
CIV-2013-404-003470	Rafiq v Auckland District Court	Judicial Review	Closed
CIV-2013-404-002407	Rafiq v The Chief Executive of the Ministry of Business, Innovation and Employment	Judicial Review	Active
CIV-2013-404-002340	APN New Zealand Limited v Rafiq	Bankruptcy	Closed
CIV-2013-404-002338	APN New Zealand Limited v Rafiq	Bankruptcy	Closed
CIV-2013-404-001717	Razdan Rafiq v The Chief Executive of the Ministry of Business, Innovation and Employment	General Proceedings - HC	Closed
CIV-2013-404-000305	Rafiq v APN NZ LTD	Appeal	Closed
CIV-2013-404-000002	Razdan Rafiq v Department of Labour	General Proceedings - HC	Closed

[3] I also understand Mr Rafiq has issued proceedings in the District Court and has taken matters to the Court of Appeal. For present purposes I do not rely on or refer to those proceedings.

[4] Four proceedings in the above table have been issued against Meredith Connell. Three of them were issued since 1 August. By a statement of claim dated 5 September Mr Rafiq sought to lodge yet a further set of proceedings against Meredith Connell. Given the other proceedings recently filed against that firm the Registrar referred those proceedings to a Judge for consideration.

[5] Mr Rafiq then presented yet a further set of proceedings against Meredith Connell by statement of claim dated 8 September. The Registrar again referred those proceedings to a Judge for the same reason.

[6] When Mr Rafiq became aware the proceedings had been referred to a Judge rather than accepted for filing and service he filed a further proceeding with a statement of claim dated 15 September, this time citing the Attorney-General as defendant. He sought a declaration that his rights had been “transgressed” and exemplary damages.

[7] Then, on 16 September Mr Rafiq presented yet a further proceeding for filing, this time against the Director of Civil Aviation Authority of New Zealand.

[8] Mr Rafiq also filed an application to review the Registrar’s decision to refer the files to a Judge.

[9] All files have been referred to me as the List Judge, including Mr Rafiq’s application to review the Registrar’s decision.

The nature of the proceedings referred to the Judge

[10] As is apparent Mr Rafiq has some familiarity with the Court process. On the face his documents satisfy the basic formal requirements for documents to be filed in the Court in that they are typed, are styled as a statement of claim, and accompanied by a notice of proceeding in proper form. The allegations in the statements of claim are set out in paragraphs and the pleaded relief follows.

[11] However, while the documents may comply with the basic requirements of the High Court Rules in relation to form the Court retains an inherent jurisdiction pursuant to which it has a duty to strike out pleadings that are an abuse of process.

[12] As Lord Diplock said in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529:¹

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 nevertheless be manifestly unfair to a party to

¹ *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, [1981] 3 All ER 727 at 729.

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; ... 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.

[13] Lord Diplock's comments were cited with approval by the Richardson J in the Court of Appeal in *Reid v New Zealand Trotting Conference* as follows:²

The abuse of process principle.

Misuse of the judicial process tends to produce unfairness and to undermine confidence in the administration of justice. In a number of cases in recent years this Court has had occasion to consider the inherent jurisdiction of the High Court, and on appeal this Court, to take such steps as are considered necessary in a particular case to protect the processes of the Court from abuse. (See particularly *Moevao v Department of Labour* [1980] 1 NZLR 464 and *Taylor v Attorney-General* [1975] 2 NZLR 675.) In exercising that jurisdiction the Court is protecting its ability to function as a Court of law in the future as in the case before it. The public interest in the due administration of justice necessarily extends to ensuring that the Courts' processes are fairly used and that they do not lend themselves to oppression and injustice. The justification for the extreme step of staying a prosecution or striking out a statement of claim is that the Court is obliged to do so in order to prevent the abuse of its processes.

[14] The approach was confirmed by the Supreme Court in *Chamberlains v Lai*.³

[15] My review of the proceedings referred by the Registrar confirms that in substance and context they are properly categorised as an abuse of the process of the Court. Although on their face the proceedings comply with the literal application of procedural rules, it would be manifestly unfair to the proposed defendants and would otherwise bring the administration of justice into disrepute among right thinking people to allow the proceedings to proceed, even to the stage of service, so that the Court has a duty to act and to peremptorily strike them out in accordance with the above principles. I explain why.

² *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 at 9.

³ *Chamberlains v Lai* [2006] NZSC 70 at [63].

Rafiq v Meredith Connell – 5 September 2014

[16] Mr Rafiq alleges that an indictment presented by the Crown Solicitor to the District Court in 2011 defames him in a variety of ways. He seeks a declaration, together with compensatory, aggravated and exemplary damages totalling \$21 million. The claim is based on an allegation the reference to him in the indictment as “Razdan Kahn also known as Razdan Rafiq” and the term “indictment” are defamatory of him. Such claims trifle with the Court process. They are also entirely misconceived as a matter of law. What is said in the indictment is protected by absolute privilege: s 14(1) Defamation Act 1992.

[17] The Registrar was correct to refer the proposed proceedings to a Judge. The pleading discloses no reasonably arguable cause of action. In addition the proceeding is frivolous and vexatious and a flagrant abuse of the process of the Court. The damages claimed are ridiculous. If the proceeding was accepted for filing, then served, inevitably it would be struck out on an application initiated by the defendant. That would be a waste of the Court’s limited resources and unfair to the defendants by unreasonably burdening them with costs for which there is no realistic prospect of recovery.

[18] In the particular circumstances of this case, I am satisfied that it is appropriate for the Court to exercise its inherent jurisdiction to dismiss the proposed proceeding at this stage. Rule 15.1(4) confirms the Court’s inherent jurisdiction is retained. The Registrar is to accept the proceeding and allocate a Court number to it. I will then dismiss it by order of the Court in the exercise of the Court’s inherent jurisdiction.

Rafiq v Meredith Connell, 8 September 2014

[19] Mr Rafiq again purports to sue in defamation on the basis of the same indictment in the District Court. He repeats the allegation that the “also known as” reference is defamatory and also alleges the content of the charge is defamatory. He seeks compensatory, aggravated and exemplary damages totalling \$17 million.

[20] For the reasons given above the claim discloses no reasonably arguable claim, is frivolous and vexatious and an abuse of process.

[21] It is to be allocated a Registry number and will then be struck out in the exercise of the Court's inherent jurisdiction.

Razdan Rafiq v Attorney-General, 15 September 2014

[22] These proceedings are based on the Registrar's referral of the first set of proposed defamation proceedings against Meredith Connell to a Judge for review.

[23] Mr Rafiq pleads that on 8 March [sic]⁴ 2014 the Registrar referred proceedings to a Judge for directions for acceptance even though the application substantially complied with High Court Rules. He seeks a declaration of breach of s 27 of the New Zealand Bill of Rights Act 1990 and exemplary damages in the sum of \$1 million.

[24] For the reasons given above, the Registrar was quite entitled to seek the direction of a Judge of this Court. Mr Rafiq's right is to seek review of the Registrar's decision, which he has done. The conclusion I have drawn as to the nature of the proceedings confirms the Registrar's decision was correct.

[25] It follows that these proceedings are also an abuse of process. The same process will apply to them.

Rafiq v Director of Civil Aviation Authority of New Zealand

[26] In these proposed proceedings Mr Rafiq alleges defamatory statements on behalf of the Director of Civil Aviation. The claim is based on the internal records of the Authority concerning its dealings with Mr Rafiq and information it holds regarding him. He seeks compensatory, aggravated and exemplary damages totalling \$100 million.

⁴ The reference to 8 March 2014 is clearly in error. Mr Rafiq did not seek to issue any defamation proceedings against Meredith Connell in March 2014. The first proceedings issued against that firm were in April 2014.

[27] In a recent decision of 5 August 2014 the Court struck out proceedings Mr Rafiq had brought against a number of entities including the Director of Civil Aviation Authority.⁵ The proceedings were struck out because of Mr Rafiq's failure to comply with the directions of the Court. To the extent there was any force or merit in the claim proposed in the current proceedings, of which none is apparent, the present claim could have been included in that particular claim.

[28] The current proceeding Mr Rafiq proposes to pursue against the Civil Aviation Authority is no more than an attempt to avoid the consequences of the striking out of the earlier proceedings. As such it is an abuse. The situation is similar to a previous case involving Mr Rafiq in *Rafiq v Secretary for Department of Internal Affairs in New Zealand*.⁶ In that case Asher J noted:

[28] It is clear that Mr Rafiq, having had his earlier proceedings struck out, has gone through the same set of documents and timeframe that led to the 1385 proceedings, found an email not previously referred to and used this as the basis of a new proceeding to maintain his campaign. The court processes were not designed for this purpose. To use them to harass and achieve a collateral gain in this way is an abuse of procedure.

[29] The Court processes are not to be used in this way. Mr Rafiq is deliberately setting out to harass Meredith Connell and a number of government entities including the Civil Aviation Authority. The Court must not allow its processes to be abused in that way.

[30] Quite apart from the abuse apparent on the face of the current proceedings, Mr Rafiq has himself effectively confirmed his intention to file vexatious proceedings in an attempt to clog the workings of the Court and to harass the defendants to his proceedings. Previous judgments of the Court confirm that to be the position. Mr Rafiq's comments to that effect have been referred to in other proceedings issued by him. In the decision of *Rafiq v Secretary for Department of Internal Affairs in New Zealand* Asher J referred to the following comments of Mr Rafiq:⁷

⁵ *Rafiq v The Secretary for the Department of Internal Affairs of New Zealand & Ors* CIV-2014-404-1385, minute dated 5 August 2014.

⁶ *Rafiq v Secretary for Department of Internal Affairs in New Zealand* [2014] NZHC 2064.

⁷ At [26].

Further the applicant shall file multiple litigations against the respondent. The litigations shall also encompass [the Secretary for the Department of Internal Affairs in New Zealand]. The litigations shall also encompass the Internal Affairs Minister and the Prime Minister and appeals shall follow right to the Supreme Court. The process shall be repeated multiple times until and unless justice is secured. Those who shall resist any proceedings and/or stand in the path of the applicant shall face series of litigations.

And later:

If you resist these proceedings then I shall feed your department with multiple litigation including the Minister.

[31] In *Rafiq v Meredith Connell* Associate Judge Bell recorded an email Mr Rafiq had sent to Meredith Connell on 25 November 2013 in which he said:⁸

At the outset of next year, I am going to flood judicial review proceedings in all the High Court of New Zealand against the Court of Appeal, Supreme Court, Judicial Conduct Commissioner, Attorney-General, Justice Minister, Minister for Courts, each and every Judge in the High Court, Court of Appeal and Supreme Court ...

[32] The Judge went on to refer to an email of 20 May 2014 in which Mr Rafiq responded to statements by others that he was a “serial litigant” and a “painful plaintiff”. That email includes the following:

It is not my fault that I cannot control filing litigations. It has become my disease. The Ministry of Justice should get the blame. ... In this criminal proceeding process I was given a disease of litigation. Since then I could not stop myself from filing litigations and if someone Googles my name will see the evidence.

Without litigations I cannot survive. Since Ministry of Justice gave me this litigation disease everyone will face litigation who shall stand in my life.

With litigations I really want to secure my life as well. Let's see?

In light of the above people should never complain that I am “serial litigant” or a “painful litigant”.

[33] For completeness I also note the following. There are no financial consequences to Mr Rafiq as a consequence of the above. He seeks a fee waiver in each case on the basis that he is in receipt of a sickness benefit.⁹

⁸ *Rafiq v Meredith Connell* [2014] NZHC 1597.

⁹ High Court Fees Regulations 2013: reg 19(a).

[34] The Court is well aware of Mr Rafiq's right to justice under s 27, including in particular to bring proceedings against the Crown. The right to justice provided in s 27 is an important right, established through the course of history and enshrined as a fundamental part of our justice system. Any suggestion that it permits Mr Rafiq to act in the way he seeks to act is to trivialise the importance of the right.

[35] Further, the resources of this Court are limited. There are genuine litigants whose cases are delayed because of the time and resources applied to deal with these entirely unmeritorious proceedings of Mr Rafiq. Their rights of access to justice are affected if the Court is required to deal with defended strike out and summary judgment applications on Mr Rafiq's files.

[36] I am aware of the serious nature of an application under s 88B Judicature Act 1908 but I direct the Registrar to forward a copy of this decision to the Solicitor-General. If he has not already done so, I ask him to consider an application on behalf of the Attorney-General under that section in respect of Mr Rafiq.

[37] In the meantime I direct that the Registrar is not to accept any further proceedings from Mr Rafiq for filing without first referring them to a Judge of this Court. I do so in the exercise of the inherent jurisdiction of the Court and in order to protect the processes of the Court and to maintain its credibility. I consider the stage has been reached where this Court has a duty to make such an order to ensure the fair and proper administration of justice in this Court.

Result/orders

[38] For the above reasons the application to review is dismissed.

Venning J