IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2022-404-459
[2022] NZHC 1756

UNDER	The Limitation Act 1950
BETWEEN	RAZDAN RAFIQ Applicant
AND	NEW ZEALAND CUSTOMS SERVICE Respondent

Hearing: 26 May 2022

Counsel: Applicant in person
V E Squires for Respondent

Judgment: 21 July 2022

JUDGMENT OF WOOLFORD J
[As to interlocutory application for leave to commence proceedings]

This judgment was delivered by me on Thursday, 21 July 2022 at 2:15 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors: Meredith Connell (Office of the Crown Solicitor), Auckland

Copy to: Applicant

Introduction

[1] On 4 April 2022, Razdan Rafiq filed an application for leave to commence defamation proceedings out of time under s 4(6B) of the Limitation Act 1950 against the New Zealand Customs Service (Customs) together with an affidavit dated 4 April 2022 and a draft statement of claim.

[2] The application was first called in the High Court on 5 May 2022 when it was adjourned to the Duty Judge list on 26 May 2022. On that date, I heard from Mr Rafiq and Ms Squires for Customs.

Background

[3] On 27 May 2015, Mr Rafiq was declared a vexatious litigant by Wylie J who made an order under s 88B of the Judicature Act 1908 that Mr Rafiq was not to institute civil proceedings in any Court without leave.

[4] After being declared a vexatious litigant, Mr Rafiq made numerous applications to the Court for leave to commence proceedings. Venning J noted in *Rafiq v Justice Whata*,[1] delivered on 29 May 2019, that Mr Rafiq had already made 13 applications for leave that year alone. All had been dismissed as in each case the proposed proceedings were frivolous and vexatious. Venning J found the case he was dealing with was also frivolous and vexatious.

[5] However, Mr Rafiq's application provided an opportunity for the Court to deliver a judgment on the status of orders made under s 88B of the Judicature Act given the repeal of that Act and its replacement with the Senior Courts Act 2016. The issue was whether orders made under s 88B of the Judicature Act unlimited as to time, would now be subject to the maximum period provided for under the relevant provisions of the Senior Courts Act. Venning J found that Mr Rafiq's vexatious litigant order was to lapse on 28 February 2022. He found that the enactment of the Senior Courts Act implied an end date to the otherwise unlimited orders made under s 88B of the Judicature Act. Since Venning J's judgment, there have been conflicting High

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1 *Rafiq v Justice Whata* [2019] NZHC 1193.

Court cases on when Judicature Act orders should lapse. The issue is currently before the Court of Appeal whose judgment was reserved on 20 October 2021.

[6] In the material filed for this proceeding on 4 April 2022, Mr Rafiq seeks leave to file a claim out of time under the Defamation Act 1992. The proposed statement of claim appears to be directed at an entry in a Customs database made in February 2008, which summarises a letter received about Mr Rafiq's character and potential for harm. He seeks, inter alia, declaratory relief and damages totalling $2 million.

[7] Mr Rafiq previously sought leave to file proceedings against Customs in 2018 when he was still a vexatious litigant for the alleged defamatory statements in February 2008.[2] Leave was declined. Lang J found that the proceeding was clearly an attempt by Mr Rafiq to engage in the same type of litigation that led to him being declared a vexatious litigant.

Opposition by respondent

[8] Customs opposes the making of the order in the application. The grounds on which Customs opposes the making of the order are as follows:

(a) The application for leave to bring the proceeding out of time is an abuse of process. Mr Rafiq has previously sought leave to bring the same proceeding – CIV-2018-404-309. The High Court has already considered that a defamation claim on the basis of the same alleged defamatory statements is without merit and declined leave for it to commence.

(b) The proceeding is also frivolous and vexatious. It is inaptly pleaded. Inadequate particulars of the alleged publication are provided. Excessive damages are sought. Further, no individual tortfeasor is identified as required by the proviso to s 6(1) of the Crown Proceedings Act 1950.

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2 *Rafiq v New Zealand Customs Service* [2018] NZHC 283.

[9] Two issues arise – is the defamation claim timed-barred, and is the proceeding an abuse of process?

Is the defamation claim time-barred?

Is it a continuing defamation?

[10] The starting point for any per se tort, which includes defamation, is that the action accrues once all the elements of the tort are completed.[3] For defamation, the relevant point in time would be when publication occurs. Unlike tortious actions that depend on damage as an element, such as negligence, there is no continuing defamation.

[11] However, Mr Rafiq's claim might be saved by what is known as the "multiple publication rule". Defamation actions can be 'renewed' whenever the defamatory material is republished. In *Sellman v Slater*, Palmer J confirmed that this rule continues to apply in the New Zealand context.[4] Palmer J stated:

> [34] The weight of authority in the United Kingdom and Australia, and Courtney J's judgment in *Wishart v Murray*, supports the multiple publication rule. The law of defamation has always considered publication to be more than just an act of the publisher. To change Lord Denning's emphasis: the cause of action arises when defamatory words are published to the person by whom they are read or heard. If a reputation falls in a forest, but no one hears of it, it does not sound in defamation.
>
> [35] It would be possible for the New Zealand courts to change the common law to adopt a single publication rule. That could conceivably extend to the sort of approach the United Kingdom Parliament has endorsed in legislation. I do not consider that would be inconsistent with s 11(1) of the 2010 Act. The reference there to "the date of the act or omission on which the claim is based" seems to me to be capable of referring to the date of first publication. And it would be easier to change the common law of New Zealand than the common law of Australia which is reinforced by state statutes. There are legitimate questions, including those raised by the defendants, about whether the single or multiple publication rule is better.
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> [36] But it is not clear to me that modifying the common law of New Zealand to replace the multiple publication rule with the single publication rule is so clearly desirable as to justify a change in the common law. In particular, I consider there are policy considerations which support the multiple publication rule applying to blog posts on the internet.

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3 Stephen Todd (ed) *The Law of Torts in New Zealand* (online ed, Thomson Reuters) at [59.16.5].

4 *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218.

> [37] The law seeks to influence the behaviour of those considering whether to publish or to take down a defamatory statement. When a blog is posted it is available for all who visit the website to see and for anyone to find in a search at any point in the future, until it is taken down (and sometimes after that, in caches). A blog post is available for discovery and perusal on individuals' phones and in their homes in a more direct and accessible way than is a newspaper or book before purchase. And a blog post continues to be so available in a much more direct and accessible way than was the back copy of the newspaper featuring the Duke of Brunswick. In a very real sense, posting a blog represents offering a continuing publication to the world.
>
> [38] There is therefore a good argument the law should seek to focus a blogger's mind on whether it is defamatory not only at the initial moment of posting a defamatory publication but on the same ongoing basis that the post remains live on the internet. The law of multiple publication does not condone zombie defamation but attempts to combat it.

[12] The argument in the present case would be that the defamatory material was first 'published' in 2008 when the relevant entries were written about Mr Rafiq in the Customs database. Then subsequently any time that the entry is accessed that would amount to a new 'publication'. Analogously, in *Lachaux v Independent Print Ltd*[5] and in *Sellman v Slater,* the English and New Zealand Courts held that anytime a website is accessed would constitute a new publication.

[13] The challenge to the argument is that because of the closed nature of the publication, in that the defamatory statements are contained on an internal Customs database, that the statements cannot be said to be 'published'.[6] The caselaw would suggest, however, that even publications to a very narrow audience still constitute a publication. For example, in *Collerton v MacLean* the High Court held that publication occurred when a defamatory document was produced for signature for six others at a meeting as well as for the chairman of that meeting.[7] The English Courts have even held that dictating defamatory statements to a secretary would amount to a publication.[8] This approach would indicate that there may have been a publication even for the few people who may have accessed the Customs database. To determine the issue for the present case would require evidence about how recently the

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5 *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334, [2018] QB 594.

6 For a useful summary see *The Law of Torts in New Zealand*, above n 3, at [59.16.5].

7 *Collerton v MacLean* [1962] NZLR 1045 (SC).

8 *Pullman v Walter Hill & Co Ltd* [1891] 1 QB 524 (CA); and *Riddick v Thames Board Mills Ltd* [1977] QB 881 (CA), especially at 907 per Waller LJ. Contrast *Angelini v Antico* (1912) 31 NZLR 841 (CA) at 849 per Denniston J. Query, however, whether the case holds merely that it is not the publication of a libel (as opposed to a slander) when a letter is dictated.

information on the database had been accessed. The only evidence at present is that the information has been accessed as late as 2017 when Mr Rafiq applied under the Privacy Act 1993 for copies of the information about him and in the process, staff would have had to access the information in order to send it to him.

Which Limitation Act applies?

[14] Depending on how the multiple publication rule is construed, the Limitation Act 1950 (the 1950 Act) or Limitation Act 2010 (the 2010 Act) might apply. The relevant provisions of the 2010 Act are:

> **59 Actions based on acts or omissions before 1 January 2011**
>
> (1) This section applies to an action, cause of action, or right of action—
>
> (a) *based on an act or omission before 1 January 2011*; and
>
> (b) to which the Limitation Act 1950 applied immediately before its repeal.
>
> (2) The action, cause of action, or right of action must, despite the repeal of the Limitation Act 1950 and unless the parties agree otherwise, be dealt with or continue to be dealt with in accordance with the Limitation Act 1950 as in force at the time of its repeal.
>
> (3) Nothing in this section prevents any provision of the Limitation Act 1950 as in force at the time of its repeal from being applied, after 31 December 2010, and by analogy, to any claim for equitable relief—
>
> (a) based on an act or omission before 1 January 2011; and
>
> (b) to which the Limitation Act 1950 immediately before its repeal did not apply directly.

[15] The 1950 Act also contains a 'longstop' provision:

> **23B Longstop period of limitation**
>
> (1) No action to which this section applies may be brought after the last to *end of the following periods*:
>
> (a) 5 years ending on the close of 31 December 2015:
>
> (b) *15 years after the date of the act or omission on which the action is based*.
>
> (2) That period of limitation applies to the action in addition to every other period of limitation that applies to the action.

(3) This section is, in accordance with section 3, subject to Part 2, which provides for the extension of that period of limitation in the case of disability, acknowledgment, part payment, fraud, and mistake.

[16] Pursuant to s 59 of the 2010 Act the starting point is that the original publication of the 2008 statements would fall under the 1950 Act because they occurred before 1 January 2011. Furthermore, under s 23B(1)(b) 15 years have not yet elapsed since the relevant act or omission. The relevant limitation period for defamation claims under the 1950 Act is two years.[9] The 1950 Act provides:

4 Limitation of actions of contract and tort, and certain other actions

(6A) Subject to subsection (6B) of this section, a *defamation action shall not be brought after the expiration of 2 years from the date on which the cause of action accrued.*

(6B) Notwithstanding anything in subsection (6A) of this section, any person may apply to the Court, after notice to the intended defendant, *for leave to bring a defamation action at any time within 6 years from the date on which the cause of action accrued*; and the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law (other than the provisions of subsection (6A) of this section), or by any other reasonable cause.

[17] Even if the Court were to give leave to bring the claim within six years, it would be time-barred. In the most favourable circumstances, in that the 2008 statements were republished on 31 December 2010 (the last possible date to bring a claim under the 1950 Act) the claim would be time-barred.

[18] Therefore, the only way to bring a claim would be for Mr Rafiq to rely on the multiple publication rule and the 2010 Act. The relevant periods of the 2010 Act are:

11 Defence to money claim filed after applicable period

(1) It is a defence to a money claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based (the claim's **primary period**).

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9 *Wilson and Horton Ltd v Lee* (1997) 11 PRNZ 550 (CA). Whether defamation proceedings can be brought out of time. Successful application: *Hodge v Television New Zealand Ltd* (1996) 10 PRNZ 263 (HC). Another out of time application: *Rawlinson v Oliver* [1995] 3 NZLR 62 (CA). Leave will not be granted where the proposed action has no chance of success.

> (2) However, subsection (3) applies to a money claim instead of subsection (1) (whether or not a defence to the claim has been raised or established under subsection (1)) if—
>
> (a) the claimant has late knowledge of the claim, and so the claim has a late knowledge date (see section 14); and
>
> (b) the claim is made after its primary period.
>
> (3) It is a defence to a money claim to which this subsection applies if the defendant proves that the date on which the claim is filed is at least—
>
> (a) 3 years after the late knowledge date (the claim's **late knowledge period**); or
>
> (b) 15 years after the date of the act or omission on which the claim is based (the claim's **longstop period**).
>
> **15 Defamation claims: primary period and late knowledge period each 2 years**
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> For a claim for defamation, "6 years" in section 11(1) and "3 years" in section 11(3)(a) must each be read as "2 years".

[19] The original publication of the 2017 entry would be too early to be captured under ss 11 and 15. However, if the multiple publication rule is applied it is at least possible that there has been a republication within the last three years and, therefore, Mr Rafiq might not be time-barred.

[20] There is also the possibility that the late knowledge period might apply, which again would depend on there being more facts about the date on which Mr Rafiq learned about the alleged defamation.

[21] Finally, the relevant standard for striking out a claim because of a limitation issue is high. In *McGechan on Procedure*, the authors state:[10]

> In order to succeed in striking out a cause of action as statute-barred, the defendant must satisfy the Court that the plaintiff's cause of action is so clearly statute-barred that the plaintiff's claim can properly be regarded as frivolous, vexatious or an abuse of process: *Murray v Morel & Co Ltd* [2007] 3 NZLR 721 (SC) at [33]. The correct procedure where an application is made under s 4(7) of the Limitation Act 1950 is spelt out in *W v A-G* [1999] 2 NZLR 709 (CA) at 737.

[10] Andrew Beck and others *McGechan on Procedure* (online ed, Thomson Reuters) at [HR15.1.07].

Is this an abuse of process?

[22] The procedural history discloses that Mr Rafiq brought very similar, or identical, proceedings in 2018 while he was still subject to a vexatious litigant order under s 88B of the Judicature Act 1908. Lang J did not grant leave to bring the proceedings on the basis that "[t]he latest proceeding is clearly an attempt by Mr Rafiq to engage in the same type of litigation that led to him being declared a vexatious litigant."[11] Mr Rafiq is, however, now no longer subject to a vexatious litigant order.

[23] Since the *Rafiq v Justice Whata* judgment, which ruled that vexatious litigant orders under the Senior Courts Act 2016 are not indefinite, this Court is only now facing proceedings that are being brought by previous vexatious litigants.[12] As such it is unclear how to properly deal with proceedings that were previously dismissed under the old regime. The best available means to strike out the claim for an abuse of process is to rely on the High Court Rules 2016, in particular rr 5.35A and 15.1.

Rule 5.35A — Registrar may refer plainly abusive proceedings to Judge before service

> **5.35A Registrar may refer plainly abusive proceeding to Judge before service**
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> (1) This rule applies if a Registrar believes that, on the face of a proceeding tendered for filing, the proceeding is plainly an abuse of the process of the court.
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> (2) The Registrar must accept the proceeding for filing if it meets the formal requirements for documents set out in rules 5.3 to 5.16.
>
> (3) However, the Registrar may,—
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> (a) as soon as practicable after accepting the proceeding for filing, refer it to a Judge for consideration under rule 5.35B; and
>
> (b) until a Judge has considered the proceeding under that rule, decline to sign and release the notice of proceeding and attached memorandum for the plaintiff or the applicant (as appropriate) to serve the proceeding.

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11 *Rafiq v New Zealand Customs Service*, above n 2.
12 *Rafiq v Justice Whata*, above n 1.

[24] The Court of Appeal in *Fallon v Planning Tribunal at Wellington* listed a number of circumstances that are "plainly an abuse of the process of the Court" and stated:[13]

> [2] Civil justice has some simple basic rules to maintain order. First, proceedings must involve claims by persons with a legitimate interest in the subject of the dispute (standing). Secondly, all persons likely to be affected directly by a judgment should be joined in the proceeding (joinder). Thirdly, claims cannot be undertaken by instalment: the claimant must bring all his or her claims on a subject together in the one claim (the rule in *Henderson v Henderson*). Fourthly, claimants who fail usually must pay a substantial contribution to the other side's costs (costs). Fifthly, the judgment is determinative of all issues in the proceeding and must be implemented unless stayed pending an appeal (execution). Sixthly, generally there is only one right of appeal, but a right to seek leave to bring a second appeal (appeal). Seventhly, once those rights are exhausted, that is that and the final judicial determination is not to be subverted by collateral challenge through further proceedings on the same subject matter (finality).

[25] In *McGechan on Procedure*, the authors identify particular categories of proceedings that have been consider plainly abusive, which include:[14]

(a) Issue estoppel/collateral challenge;

(b) Lack of jurisdiction;

(c) Immunity of proposed defendant;

(d) Wrong parties joined;

(e) Lack of valid cause of action/ incomprehensibility of proceeding;

(f) "Pseudolaw";

(g) Fundamental inappropriateness of proceeding; and

(h) Inadequately pleaded allegations.

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13 *Faloon v Planning Tribunal at Wellington* [2020] NZCA 170.

14 *McGechan on Procedure*, above n 10, at [HR5.35A.02].

[26] Of those categories listed the lack of valid cause of action and inadequately pleaded allegations are the most relevant, which is what the respondent has alleged in its memorandum.

[27] The caselaw where claims have failed owing to a lack of valid cause of action would indicate that Mr Rafiq's claims would not fail on this basis. For example, in *Power v Little* the Court struck out claims that were not legally available because they were based on a fundamental misunderstanding of the statutory provisions on which they were based, where the matters pleaded were almost solely matters of evidence and where the relief sought was not within the power of the Court.[15] And in *Smyth-Davoren v Parker* the Court struck out a claim because the plaintiff's cause of action was an unspecified and ungrounded claim against another's property.[16]

[28] Unlike the aforementioned cases, Mr Rafiq has an identifiable cause of action — defamation — and has at least identified allegedly defamatory statements that the respondent has published. Aside from the potential deficiencies with the limitation issues, the most abusive aspect of the proceedings would be the amount that Mr Rafiq is claiming, which is $2 million. However, the large sum alone is insufficient to cross the threshold.

[29] There is more limited caselaw under r 5.35A for claims being struck for being inadequately pleaded as this is typically reserved for r 15.1. One example is *Jones v New Zealand Bloodstock Finance and Leasing Ltd* where claims of conspiracy, harassment and breach of privacy were struck out as being based on bare allegations without adequate pleading or particulars.[17] However, Mr Rafiq has identified particular defamatory statements and is not relying on an unproven conspiracy as in *Jones.*

Rule 15.1 — Dismissing or staying all or part of proceeding[18]

> **15.1 Dismissing or staying all or part of proceeding**
>
> (1) The court may strike out all or part of a pleading if it—

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15 *Power v Little* [2022] NZHC 143.
16 *Smyth-Davoren v Parker* [2018] NZHC 3034 at [7]–[8].
17 *Jones v New Zealand Bloodstock Finance and Leasing Ltd* [2021] NZHC 3220 at [23]–[32],
18 See *McGechan on Procedure*, above n 10, at [HR15.1] for useful commentary.

(a) *discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading*; or

(b) is likely to cause prejudice or delay; or

(c) *is frivolous or vexatious*; or

(d) is otherwise an abuse of the process of the court.

(2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.

(3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.

(4) This rule does not affect the court's inherent jurisdiction.

[30] The principles that guide r 15.1(1)(a) can be found in two decisions: *Attorney-General v Prince and Gardner*[19] and *Couch v Attorney-General*.[20] In *Attorney-General v Prince and Gardner,* the Court of Appeal stated:[21]

> A striking-out application proceeds on the assumption that the facts pleaded in the statement of claim are true. That is so even although they are not or may not be admitted. It is well settled that before the Court may strike out proceedings the causes of action must be so clearly untenable that they cannot possibly succeed (*R Lucas & Son (Nelson Mail) Ltd v O'Brien* [1978] 2 NZLR 289 at pp 294 – 295; *Takaro Properties Ltd (in receivership) v Rowling* [1978] 2 NZLR 314 at pp 316 – 317); the jurisdiction is one to be exercised sparingly, and only in a clear case where the Court is satisfied it has the requisite material (*Gartside v Sheffield, Young & Ellis* [1983] NZLR 37 at p 45; *Electricity Corporation Ltd v Geotherm Energy Ltd* [1992] 2 NZLR 641); but the fact that applications to strike out raise difficult questions of law, and require extensive argument does not exclude jurisdiction (*Gartside v Sheffield, Young & Ellis*).

[31] And in *Couch* the Supreme Court stated:

> [33] It is inappropriate to strike out a claim summarily unless the court can be certain that it cannot succeed. The case must be "so certainly or clearly bad" that it should be precluded from going forward. Particular care is required in areas where the law is confused or developing. And in both *X v Bedfordshire County Council* and *Barrett v Enfield London Borough Council* liability in negligence for the exercise or non-exercise of a statutory duty or power was identified as just such a confused or developing area of law. Lord Browne-Wilkinson in *X* thought it of great importance that such cases be considered on the basis of actual facts found at trial, not on hypothetical facts

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19 *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA).
20 *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725.
21 At 267.

> assumed (possibly wrongly) to be true for the purpose of the strike-out. Lord Slynn in *Barrett* was of the same view: the question whether it is just and reasonable to impose a liability of negligence is not to be decided in the abstract for all acts or omissions of a statutory authority, but is to be decided on the basis of what is proved.

[32] For the reasons above at [29] Mr Rafiq most likely does not cross this threshold.

[33] The relevant passage from *McGechan on Procedure* states:

> **(1) Frivolous**
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> A frivolous proceeding is one which trifles with the court's processes: *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53 at [89]. "Frivolous" applies to a proceeding which lacks "the seriousness required of matters for the Court's determination": *Deliu v Hong* [2011] NZAR 681 (HC) at [22].
>
> **(2) Vexatious**
>
> As with the "prejudice or delay" ground, all pleadings tend to vex the opponent. The key is, again, an element of impropriety, often a procedural impropriety*: Commissioner of Inland Revenue v Chesterfields Preschools Ltd* at [89]. *Registered Securities Ltd (in liq) v Yates* (1991) 5 PRNZ 68 (HC) is an example (a second attempt, by bringing a fresh proceeding, to obtain summary judgment when the earlier unsuccessful proceeding in which summary judgment had unsuccessfully been brought remained extant).

[34] It could be argued that Mr Rafiq's defamation claim is a frivolous claim. While the allegations that are contained within the Customs database are serious in nature, the extremely narrow audience and the correspondingly small loss of reputation could mean that the proceedings are not sufficiently serious to warrant the use of a court process. Analogously in *Deliu v Hong* the Court was concerned with various insults and allegations between two lawyers.[22] The two lawyers in that case had alleged that each other had breached their professional duties, a very serious allegation for a lawyer. However, the Court determined that despite the serious nature of some of those allegations the proceeding were nevertheless not serious in nature.

[35] The potentially vexatious element in Mr Rafiq's claim is that he has already attempt to bring similar, if not identical, proceedings that were dismissed. Because the Court is now only receiving the first wave of proceedings brought by previously

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[22] *Deliu v Hong* [2011] NZAR 681 (HC) at [22].

vexatious litigants it is unclear whether a claim that had previously not been granted leave under a vexatious litigant order would constitute a "second attempt" to relitigate issues. In *Collier v Butterworths of New Zealand Ltd*, the Court rejected an attempt by a plaintiff to bring a claim that had already been struck out owing to Limitation Act issues.[23] There are two important differences in the present case. First, the decision to not grant leave did not make any judgment about the merits of Mr Rafiq's claim of defamation. Unlike *Collier*, and other similar cases, there is no ruling finding a glaring deficiency in Mr Rafiq's claim. Secondly, the reason for originally dismissing Mr Rafiq's claim no longer exists as he is no longer a vexatious litigant.

Conclusion

[36] Mr Rafiq's claim may not be time-barred owing to the multiple publication rule. His claim may not amount to an abuse of process because he does identify a relevant cause of action and has identified some material on which to base his claim. His claim is however an abuse of process because it is frivolous in nature. It is not sufficiently serious to warrant the use of a Court process. It is, accordingly, struck out under r 15.1(1)(c) of the High Court Rules.

[37] Mr Rafiq is instead invited to ask Customs under the Privacy Act to correct his personal information, which includes removal of the 2008 statements from Customs records.

Woolford J

[23] *Collier v Butterworths of New Zealand Ltd* (1997) 11 PRNZ 581 (HC). There are other similar examples provided in *McGechan*.