IN THE NEW ZEALAND SUPREME COURT **SC /2014**
AUCKLAND REGISTRY

UNDER	**The Judicature Act 1908, the Supreme Court Act 2003 and relevant to the proposed Courts Act in Parliament**
IN THE MATTER OF	**An Application for Judicial Review under the Judicature Amendment Act 1978 and s 27 of the New Zealand Bill of Rights Act 1990**

BETWEEN **VINCENT ROSS SIEMER**
Legal News Publisher
27 Clansman Terrace
Gulf Harbour
Appellant

AND **REGISTRAR of the SUPREME COURT**
Lambton Quay at Ballance St
Wellington
First Respondent

AND **MINISTRY OF JUSTICE**
PO Box 2940
Wellington 6140
Second Respondent

And ***NEW ZEALAND ATTORNEY GENERAL***
Invited to make submissions in the public interest

APPLICATION FOR LEAVE TO APPEAL

11 June 2014

Submitted by: Vince Siemer, plaintiff
27 Clansman Tce.
Gulf Harbour
Email: vsiemer@hotmail.com

I, **Vince Siemer**, the appellant, give notice that I seek leave to appeal to the Supreme Court the strike out judgment in the judicial review of *Vincent Ross Siemer v Registrar of the Supreme Court CIV 2013 404 4750 [2014] NZHC 1179* given by Clifford J on 29 May 2014 in the Wellington High Court **("the judgment")**. Three copies of the judgment are included.

The grounds for leave to appeal are:

a. The Judge erred in law, negating the seminal guarantee to judicial review provided by Parliament in s27(2) of the New Zealand Bill of Rights Act 1990, and affirmed by s6 as preferred law in interpreting legal rights, solely in favour of obiter comment from a court decision which self-evidently had not officially considered the jurisdictional conclusions adopted in the Judgment.

b. The Judge erred in law in summarily striking out the legislative guarantee to judicial review in violation of the principles confirmed by the Supreme Court in *Couch v Attorney General [2008] NZSC 45*, in circumstances where these principles were accepted by the judge as applicable.

c. The Judgment's reliance upon *Marfart v Television New Zealand Limited [2006] NZSC 33*, to the exclusion of all other law, was in error, particularly as *Marfart's* reliance upon the court rules were accepted to not apply to the matter and the abstract mechanism said to be afforded by *Marfart* could not provide the Judicial Review relief sought – including advising the New Zealand government that the First Defendant was prohibiting all public access to the Supreme Court due to an absence of legislation allowing for access.

d. The Judge erred in law in summarily accepting, as exclusive, jurisdiction by the Supreme Court despite acknowledging the rules relied upon to support such an exclusive jurisdiction may not be legally relevant.

e. The Judgment is inherently unsafe in law for any one of the reasons stated above.

Leave directly to the Supreme Court is justified on grounds:

f. The Judgment, while allegedly wrong in law on several discreet points, asserted the Supreme Court to be the Court of inherent jurisdiction and, consequently, there exists the probability:

   i. The Court of Appeal may be reluctant to exert jurisdiction in the circumstances.

   ii. The appeal ground of elementary jurisdiction for a judicial review raises significant questions of law, including the jurisdiction of the Supreme Court itself, such that the appeal will likely be determined by the Supreme Court in any event.

In particular:

1.0 In the Judicature Amendment Act 1978, Parliament provided for Judicial Review of public authorities, affirming this right as a "guarantee" under s 27(2) of the New Zealand Bill of Rights Act 1990. Section 6 of the New Zealand Bill of Rights Act 1990 goes further in endorsing the pre-eminence to be given this legislative act in the interpretation of legal rights by the Courts:

> *Interpretation consistent with Bill of Rights to be preferred—*
> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

2.0 In summarily striking out the Appellant's Judicial Review of the Registrar of the Supreme Court on grounds of jurisdiction, the Judge failed to address the clear and prominent relevance of the New Zealand Bill of Rights Act 1990 to the legal guarantee to Judicial Review in his analysis or in his finding and this was a fatal error in law.

3.0 At Paragraph [10] of the Judgment, the Judge accepted the following principles as well-established constraints to the Court's power to strike out a pleading:[1]

> "(i) Pleaded facts, whether or not admitted, are assumed to be true.
> (ii) The cause of action must be clearly untenable.
> (iii) The jurisdiction is to be exercised sparingly, and only in clear cases.
> (iv) The jurisdiction is not excluded by the need to decide difficult questions of law, requiring extensive argument.
> (v) The Court should be particularly slow to strike out a claim in any developing area of the law."

4.0 Notwithstanding this acceptance, which included the expressed acceptance of the accuracy of the pleaded facts,[2] the Judge granted strike out despite the inability to determine the cause of action was clearly untenable, in circumstances where the Judgment makes equally evident the area of law is developing, as evidenced by the Judgment's acceptance no other defined mechanism of appeal or review exists.

5.0 Because the Judgment failed to merely mention the relevance of the guarantees to Judicial Review provided by the New Zealand Bill of Rights Act 1990 in its analysis or findings, it equally cannot be said to have determined a difficult question of law on the elementary

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[1] *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33]
[2] Paragraph [2] of the Judgment

question of jurisdiction (and certainly not so without the distilling discipline of a reasoned appeal decision).

6.0 The Judgment's sole reliance upon *Marfart v Television New Zealand Limited [2006] NZSC 33* to negate the right to Judicial Review is extremely tenuous if applicable at all. Firstly, Marfart dealt exclusively with a single legal question different from the Judgment which relied upon it:

> "[1] Does the Court of Appeal have jurisdiction to hear an appeal from a High Court determination of an application under the Criminal Proceedings (Search of Court Records) Rules 1974? That is the single question addressed on the present appeal."

7.0 The Court's answer to this question was "yes", with this authority then defining the inherent jurisdiction at [16] as:

> "The inherent jurisdiction is:[footnote omitted]
> ... the authority of the judiciary to uphold, to protect, and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner."

8.0 The First Respondent is not a judicial officer and was not acting in any judicial capacity. He was acting as a public administrative authority, as an employee of the Ministry of Justice. Indeed, he professed to take "advice" before issuing his decision.

9.0 In the Judgment, "passages" from *Marfart* were cited as "central" to the negation of the right to judicially review this administrative employee, including:[3]

> "Where rules of Court provide for access to Court records, the inherent supervisory power is regulated by the rules."

10.0 The Judgment then went on to conclude the only Supreme Court Rules which might apply (rr 5 & 7) may not apply.[4] This would appear to potentially negate even the Supreme Court's supervisory power over this administrative decision the Appellant sought to judicially review.

11.0 The legal errors were compounded by the Judgment's favourable assessment of the actual merits of the Judicial Review at [31], after striking out the Judicial Review.

Vince Siemer, Appellant

This document is filed by the Appellant, whose address for service is **27 Clansman Terrace, Gulf Harbour 0930**

Copies to Respondents c/o Crown Law

[3] Paragraph [20]
[4] Paragraph [29]