

UNDER

The Public Records Act 2005, the Judicature Act 1908, the Supreme Court Act 2003 and relevant to the proposed Courts Act

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

MALCOLM EDWARD RABSON
173 Wellington Road
Paekakariki
Plaintiff

AND

REGISTRAR of the SUPREME COURT
Lambton Quay at Ballance St
Wellington
First Defendant

AND

MINISTRY OF JUSTICE
PO Box 2940
Wellington 6140
Second Defendant

And

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

STATEMENT OF CLAIM

27 August 2014

Filed by: Malcolm Rabson, plaintiff

Paekakariki
Email: bluescape@xtra.co.nz

STATEMENT OF CLAIM

The Plaintiff says:

- 0.0 The plaintiff is a former company director and trustee with experience in New Zealand Supreme Court appeals which have not been addressed transparently and publicly or in compliance with the Supreme Court Act 2003.
- 1.0 The first defendant is an employee of the second defendant appointed administrator of New Zealand's highest court under the State Sector Act 1988 whose official responsibilities include maintaining an accurate and public record of the rulings of the Supreme Court.
- 2.0 The second defendant is the first defendant's Crown employer sued in respect to the official actions of the first defendant.

RELEVANT FACTS

- 3.0 The plaintiff filed an application to the Supreme Court on 13 August 2014 seeking recall of [2014] NZSC 90 and [2014] NZSC 103 ("**the Recall Application**"), on the ground, inter alia, the Supreme Court determination "there is no statutory right of appeal"¹ was wrong in law and that the Supreme Court Act 2003 and the Supreme Court's majority ruling in *Attorney General v Chapman* [2011] NZSC 110 proved this determination by the Supreme Court to be wrong in law.
- 4.0 The Judgments [2014] NZSC 90 and [2014] NZSC 103 ("**the Leave Refusals**") had refused the plaintiff leave to appeal to the Supreme Court notwithstanding the Supreme Court Judges accepting the plaintiff's appeal to the Supreme Court held merit against a reserved judgment of the Court of Appeal awarding costs against him in a hearing the Court of Appeal had accepted the plaintiff had no standing.
- 5.0 The Leave Refusals reasoned the miscarriage of justice which resulted from a full bench of the Court of Appeal's unlawful ruling against the plaintiff might be remedied by seeking recall from the Court of Appeal.
- 6.0 A private and unauthored email from an anonymous Supreme Court email address on 14 August 2014 purported to dismiss the Recall Application as follows ("**the Recall Refusal**"):

¹ At Paragraph [4]

“Dear Mr Rabson

The Court has issued the following direction, in response to your application for recall (no.2), filed on 13 August 2014:

“The application raises no new matters and is dismissed.”
-14 August 2014.”

- 7.0 The Recall Refusal was not in proper form, not transparent and not publicly recorded.
- 8.0 The Recall Refusal did not identify any judicial officers involved.
- 9.0 The Recall Refusal was made or directed by the first defendant as Registrar.
- 10.0 The first defendant had an official duty to publicly record the Recall Refusal, including identification of the judges behind the determinations, but failed to do either in this case.
- 11.0 The first defendant’s actions described above are part of a pattern where the first defendant has failed to publicly record decisions of the Supreme Court which dispose of matters before the Supreme Court.
- 12.0 Within the previous 24 months, the first defendant has failed to publicly or accurately record Supreme Court rulings disposing of applications made by Mr Tatsuhiko Koyama, Mr Vincent Siemer, Mr John Slavich and Mr Richard Guy.

PLAINTIFFS’ SET OF JUDICIAL REVIEW CAUSES OF ACTION AGAINST DEFENDANTS

13.0 THE RECALL REFUSAL IS BASED UPON AN ERROR IN LAW

- 14.0 The first defendant is obligated under the common law and under the Public Records Act 2005 to maintain a public record of determinations of the New Zealand Supreme Court and the Recall Refusal amounted to an erroneous approach to this official obligation in law.

15.0 THE RECALL REFUSAL IS PART OF BROADER PROCEDURAL IMPROPRIETY

- 16.0 The Recall Refusal was procedurally improper, as it was in direct conflict with the first defendant's lawful obligations and custom to maintain a public record of determinations by judges of New Zealand's highest court.
- 17.0 The Recall Refusal's failure to divulge the identity of the judges directing the plaintiff's recall application be dismissed was additionally improper procedurally.
- 18.0 The Recall Refusal is not an isolated case of procedural impropriety by the first defendant but rather an example of a broader approach whereby the first defendant is not publicly recording Supreme Court rulings, as evident in the pleading at 11.0 above, further underscoring the procedural impropriety.
- 19.0 This procedural impropriety of not publicly recording disposal of matters before the Supreme Court is in violation of the Supreme Court's responsibility generally and the first defendant specifically under the Public Records Act 2005.

WHEREFORE the plaintiff seeks:

- 20.0 An order by the Court directing the first defendant publicly record the Supreme Court's disposal of the Recall Application.
- 21.0 A Court direction advising the New Zealand government of the breach by the first defendant in not publicly recording decisions which disposed of applications to the Supreme Court.
- 22.0 Such other relief as the Court deems fit.

Malcolm Edward Rabson, Plaintiff

This document is filed by the Plaintiff, whose address for service is **Road, Paekakariki**

Copies to: Crown Law, for the defendants