

*Moodie v Strachan* [2013] NZHC 2951

(Interlocutory decision – HC Wellington)

**Issues:** HCR, r 15(1): pleadings that are prejudicial, vexatious or an abuse of process

**Judgment:** 8 November 2013

**Disclosure:** Ali Romanos assisted S subsequent to this decision.

**Facts:** S was a solicitor employed by M. After the two had a falling out over remuneration, S and M were entangled in various disputes across the Employment Court and High Court. M brought a claim against S for comments about her employment by M, which she allegedly made to a journalist with the *Listener* who used the comments in an article. M also sued another barrister for comments in the article, as well as the magazine publisher. M subsequently settled with those two parties, but maintained his action against S.

S sought to strike-out parts of M's sixth amended statement of claim on the basis they were prejudicial, vexatious or an abuse of process.

**Held:** (Kós J) The Judge struck out several paragraphs from M's claim, where they contravened the pleadings principles enunciated by the Court of Appeal in *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [87] to [91].

### **Discussion:**

The discussion in *Chesterfields*, referred to in the Judgment, provides recent and authoritative commentary on HCR, r 15.1 (Dismissing or staying all or part of proceeding). The main points to note are:

- Pleadings *likely to cause prejudice or delay* are those that involve an element of impropriety and abuse of the court's processes, including pleadings that are prolix (i.e. excessively wordy), irrelevant, scandalous (i.e. irrelevant *and* malicious), unintelligible (i.e. impossible to understand), or plead evidential matters.
- *Frivolous pleadings* are those that trifle with the court's processes.
- *Vexatious pleadings* are those that contain an element of impropriety
- *Otherwise an abuse of process* captures all other instances of misuse of the court's processes, such as a proceeding brought with an improper motive or in an attempt to obtain a collateral benefit.

Finally, it is worth noting that proceedings will be dismissed only sparingly. If the defect in the pleadings can be cured, then the court will normally order an amendment of the statement of claim.