

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2022-404-001061
[2022] NZHC 1781**

IN THE MATTER OF The Court's inherent jurisdiction

AND

IN THE MATTER OF An application by James Neil Olsen for an
order requiring the take-down of a website
impersonating an officer of this Court

BETWEEN JAMES NEIL OLSEN
Applicant

Hearing: (On the papers)
Counsel Applicant in Person
Judgment: 22 July 2022

**JUDGMENT OF MOORE J
[Without notice originating application]**

This judgment was delivered by me on 22 July 2022 at 4:30 pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar / Deputy Registrar

Date:

Introduction

[1] Mr Olsen is a criminal barrister practising in Auckland. He recently discovered a website purporting to be his own. It is not. It appears to be a scam designed to deceive those seeking legal services into paying an upfront fee for services which would never be provided.

[2] Understandably, Mr Olsen wants the website removed. He has tried, in various ways, to achieve that. He now applies without notice to this Court for orders to that effect.

[3] The proceedings have been placed in the Duty Judge's list on Monday, 25 July 2022. That is for the purpose of either hearing and resolving the matter at that time or for timetabling orders to be made to progress the matter to a hearing.¹

[4] For the reasons which follow, I can see no good reason why this matter cannot be decided on the material presently before the Court. Furthermore, any delay in finalising these proceedings unnecessarily extends the opportunity for members of the public to be harmed. It cannot be in the interests of justice for a determination to be delayed.

[5] In summary, I am satisfied that on the material before me, I am able to deal with this matter and make the necessary orders without the need for any further appearances.

Background

[6] Mr Olsen has brought these proceedings by way of a without notice originating application. Through the operation of r 19.5 of the High Court Rules 2016, Mr Olsen was required to seek permission to commence the proceedings in that way. By Minute dated 19 July 2022, Woolford J determined that in terms of r 19.5, it would be "in the interests of justice" to grant permission. His reasons for doing so are set out in some detail in his Minute.²

¹ *Re Olsen* HC Auckland CIV-2022-404-1061, 19 July 2022 (Minute of Woolford J) at [23].

² At [17]–[22].

[7] The relevant facts, as drawn from Mr Olsen’s first affidavit in support, are succinctly summarised by Woolford J. The relevant extracts are reproduced in full below:

“[5] On 28 June 2022, Mr Olsen discovered a website, <https://jamesolsenz.com> [sic]³ (“the website”), purporting to be his own. The Website was apparently created by copying that of another barrister, Mr Joon Yi, replacing the name ‘Joon’ with ‘James’, deleting information that could not apply to Mr Olsen, and replacing a photo of Mr Yi with a photo of Mr Olsen, sourced from his own, genuine website.

[6] Mr Olsen believes the website is a scam designed to trick people seeking a lawyer into paying upfront fees to the website’s creator.

[7] The website contains contact details that are not Mr Olsen’s own. As the text of the website is copied from Mr Yi’s website, it is obviously not an accurate description of Mr Olsen’s career.

[8] Mr Olsen has discovered, using a free online tool, that the website was registered on 1 March 2022, and last updated on 23 June 2022. It is hosted by NameSilo LLC, a registered company in Phoenix, Arizona, United States.

[9] The creator of the website uses PrivacyGuardian, an online anonymisation service, to hide his or her personal details. Mr Olsen is unwilling to contact NameSilo LLC as this will require him to provide evidence of his identity that may be used to support the scam.

[10] Mr Olsen has filed a complaint with Police. On 30 June 2022, the Police informed Mr Olsen they had contacted the domain host to seek removal of the website, and that the website was likely operated from Nigeria.

[11] Mr Olsen also contacted the New Zealand Law Society (NZLS) who advised him there was nothing they could do about the website. Mr Olsen has given notice of the proceeding to NZLS and suggests they could be present at a telephone conference to resolve the proceedings.”

(footnote added)

[8] Woolford J’s Minute helpfully goes on to set out the grounds relied on by Mr Olsen that it would be in the interests of justice that the proceedings be commenced by way of originating application. Because these grounds are relevant to the determination of the merits of the case, I repeat them here:

“[13] Mr Olsen submits an originating application would be in the interests of justice. This is because:

³ This statement of the website URL has one extra “n” added, such that the letters after Mr Olsen’s name spell “nz”. The actual URL is <https://jamesolsenz.com>. It is not unusual for spam websites to include errors such as this.

- (a) The substantive proceeding involves the Court's inherent jurisdiction to control its officers. If the website remains online it will put the administration of justice into disrepute as it gives untrue information about an officer of the Court, with a (likely) view to misleading the public for financial gain.
- (b) There is no defence to the substantive proceedings. The website is plainly fraudulent. However, Mr Olsen concedes there may be jurisdictional issues as the website's host, and presumably its creator as well, are overseas.
- (c) The proceeding is simple. Its sole purpose is to obtain an injunction requiring NameSilo LLC and any other parties necessary, to take down the website. No other proceedings would follow.
- (d) There are no other parties. The creator of the website cannot be identified. The orders sought would apply to NameSilo LLC, and potentially Google and related websites. Those entities have no interest in maintaining the website and would simply remove if it ordered.
- (e) There is urgency. Mr Olsen has already received an email which suggests a person has been fooled by the website. There is a risk members of the public will be cheated out of money, and that other lawyers, the Police or Court staff will send sensitive information to the contact address on the website."

[9] Since Mr Olsen made his original affidavit in support of the application, he has had contact with NameSilo LLC. He has asked them to remove the website. At their suggestion he has submitted an abuse report although, to date, without response. However, NameSilo LLC has indicated to Mr Olsen that they would remove the website if served with a United States Court order.

[10] Mr Olsen has noticed that the website was last updated on 16 July 2022 suggesting that it is being actively used by the operator.

[11] On 19 July 2022, he discovered that in addition to the website, someone has created a LinkedIn profile in Mr Olsen's name, using his photo and holding him out as a self-employed lawyer in Auckland. While at first glance the profile appears genuine, there are indicators that it is not. For example, the middle initial of Mr Olsen's name is incorrectly recorded as "J" rather than "N". Mr Olsen has contacted the Police in the hope they could obtain a production order to identify the

user subscription details of the account. The Police have apparently indicated they will look into the matter, but have no direct line of contact with LinkedIn. The Police suggested that Mr Olsen contact LinkedIn directly. Mr Olsen followed that advice and has reported the fake profile to LinkedIn.

Should the Court order that the website be taken down?

[12] In the absence of an opposing party, I considered whether the Court would be assisted by the appointment of a contradictor in the form of counsel assisting. However, on reflection, I have decided that course is unnecessary for two principal reasons:

- (a) I am easily satisfied that this Court has the power to make the orders sought by Mr Olsen; and
- (b) there is urgency in ensuring that the misleading website is taken down without any further, unnecessary delay to avoid members of the public being harmed and Mr Olsen's professional reputation being compromised.

[13] In his Minute of 19 July 2022, Woolford J invited Mr Olsen to consider the applicability of an injunction under s 43 of the Lawyers and Conveyancers Act 2006 ("the Act"). In his updating memorandum, Mr Olsen addresses that issue. For the reasons he gives, I agree that s 43 is inapplicable in these particular circumstances. That conclusion arises from a simple exercise in statutory interpretation.

[14] Section 43 of the Act provides:

"The High Court or the District Court may, on the application of any person (including the New Zealand Law Society or the New Zealand Society of Conveyancers), grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following:

- (a) a contravention of any of the provisions of sections 21, 22, 23, 24, 26, 30(6), 32, 33, 35, and 37(6):
- (b) an attempt to contravene such a provision:
- (c) aiding, abetting, counselling, or procuring any other person to contravene such a provision:

- (d) inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene such a provision:
- (e) being in any way (whether directly or indirectly) knowingly concerned in, or party to, the contravention by any other person of such a provision:
- (f) conspiring with any other person to contravene such a provision.”

[15] As can be seen, s 43(a) permits an injunction to be granted restraining a person from engaging in conduct that is in contravention of any of ss 21, 22, 23, 24, 26, 30(6), 32, 33, 35 and 37(6). None of these provisions, in my view, is applicable here for the reasons which follow:

- (a) s 21 makes it a crime for a person, not being a lawyer, to provide legal services in New Zealand. That is not the case here;
- (b) s 22 relates to misleading descriptions. Again, it refers to a person holding themselves out as providing legal services or being qualified to do so. As with ss 21 and 23, these provisions appear only apply in circumstances where a person is held out, either by themselves or another, as a lawyer in circumstances where they are not entitled to practice as such. As Mr Olsen points out, the provisions do not appear to address the impersonation of lawyers; and
- (c) the other provisions cited in s 43(a) are also, in my view, inapplicable on the present facts.

[16] I agree with Mr Olsen that all of these provisions are designed to prevent those not holding a practising certificate from posing as lawyers. This interpretation weighs in favour of the Court exercising its inherent jurisdiction. It is to that issue I now turn.

[17] Every Court possesses an inherent power to prevent an abuse of its own process. However, it is well settled that this Court’s inherent powers are much more far reaching.⁴

⁴ See Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 899–901 including in particular his comments that the High Court “declares its own jurisdiction” and the examples given of the exercise of that jurisdiction.

[18] Even before the passing of the Contempt of Court Act 2019,⁵ the High Court had the power to order website hosts to remove websites or parts of websites which might prejudice a defendant's fair trial rights. In *Lyttleton v R*, the Court of Appeal confirmed that the High Court has an inherent jurisdiction to make a take-down order.⁶ In that case the Court was required to balance the right of the media to freedom of expression, including the right to impart or receive information, with the right of the applicant to a fair trial, a right which is fundamental to a defendant but is also part of the proper administration of justice generally.⁷ While I accept there are real and significant factual differences between *Lyttleton* and present facts, the inherent jurisdiction to make a take-down order has since been exercised in several cases.⁸ There can be little doubt it exists.

[19] Based on those principles, I am easily satisfied that this Court enjoys the necessary inherent jurisdiction. Although this case does not concern fair trial rights, it nevertheless involves an obvious risk to the public arising from the impersonation of an officer of this Court. Members of the public who seek assistance from lawyers in the administration of justice may fall victim to scams of this nature. As with the jurisdiction conferred under the Contempt of Court Act, the false statements could well operate to undermine public confidence in the integrity of the legal profession. Parties and potential clients seeking legal assistance may also send sensitive information to the contact details wrongly believing the website is genuine. Inadvertent disclosure of sensitive information plainly undermines the administration of justice. The jurisdiction to make a take-down order in these circumstances is thus justified by the need to maintain confidence in the legal profession, the rule of law and the facilitation of the administration of justice.

⁵ Contempt of Court Act 2019, s 24 provides that the Court may make a take-down order where there is an arguable case that a person has published a false statement about a Judge or court and there is a real risk that the statement could undermine public confidence in the independence, integrity, impartiality, or authority of the judiciary or a court.

⁶ *Lyttleton v R* [2015] NZCA 279, [2016] 2 NZLR 21 at [13] citing *Siemer v Solicitor-General* [2013] NZSC 68, [2013] 3 NZLR 441 at [169].

⁷ At [36(d)].

⁸ See for example *R v Tarapata* [2017] NZHC 3209; *Kahia v Police* [2018] NZHC 1023; *R v Morris-Bamber* [2020] NZHC 2534; and *R v Lyttle* [2017] NZHC 2426.

[20] The next question is whether, in these particular circumstances, the Court should exercise such a power. I am satisfied for the reasons which follow that it should.

[21] First, the website is plainly false and potentially misleading. Its creation and publication were not authorised by Mr Olsen.

[22] Secondly, it would appear to have been created for the purpose of perpetrating a fraud on members of the public. The Police have indicated they believe it has its origins in Nigeria, a jurisdiction which is well-known to host false and fraudulent websites designed to scam.

[23] Thirdly, unsurprisingly given the above, there is no opposing party. Indeed, attempts to identify the creator of the website has proved impossible because they are sitting behind an anonymisation service specifically designed to conceal the creator's personal or contact details. Should any opposing or interested party reveal themselves, leave will be reserved for them to apply on notice for orders to reserve or vary the take-down order.

[24] Fourthly, Mr Olsen has taken all reasonable steps in an attempt to have the website removed or taken down. He has contacted NameSilo LLC, despite well held reservations. He was told the hosting provider was an entity based in Belize. Unsurprisingly, Mr Olsen describes himself as "not comfortable" contacting the website hosting provider directly. He has submitted an abuse request to Internet Corporation for Assigned Names and Numbers. They have advised he would need to contact NameSilo LLC's abuse team before they could action the request. He has complained to the Police and reported the fake profile to LinkedIn. Without more coercive powers, there is little else he can do.

[25] Fifthly, in contrast to the principles set out by the Court of Appeal in *Lyttleton v R*, there is no balancing exercise in play here.⁹ There is no countervailing public or other interest in the website being maintained.

⁹ *Lyttleton v R* [2015] NZCA 279, [2016] 2 NZLR 21.

Result

[26] In these circumstances, I am easily satisfied that the orders sought by Mr Olsen should be granted without delay. Accordingly, I direct:

- (a) that a take-down order of the website <https://jamesolsenz.com> be issued;
- (b) the applicant is granted leave to apply for any such further or other orders which he considers necessary to give effect to the above order; and
- (c) leave is reserved for any interested party to apply on notice for orders to rescind or vary the take-down order.

Moore J

Solicitors:
Mr Olsen, Auckland