

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 35/2026
[2026] NZSC 135**

RE

RAZDAN RAFIQ
Applicant

Counsel: Applicant in person

Judgment: 17 September 2026

JUDGMENT OF WILLIAMS J

The Registrar is to set a timetable for submissions.

REASONS

[1] Mr Rafiq has filed an application for leave to appeal to this Court. A Deputy Registrar accepted the proceeding for filing but referred it to me pursuant to s 164A of the Senior Courts Act 2016 on the basis that it seemed to be plainly an abuse of this Court’s process.

[2] I am satisfied the application is not plainly an abuse of process. My brief reasons follow.

Background

[3] Mr Rafiq brought a civil claim in the High Court against “New Zealand Post Group trading as New Zealand Post”. He claimed he had paid for three tracked courier bags that contained important documents but were not delivered. This non-delivery was said to breach the New Zealand Bill of Rights Act 1990, the Court of Appeal (Civil) Rules 2005, the Consumer Guarantees Act 1993, the Contractual Remedies Act 1979 and the Postal Services Act 1998, among other things. Mr Rafiq claimed over \$300 million in compensatory, aggravated and punitive damages.

[4] The High Court struck out the claim prior to service as plainly an abuse of process.¹ The Court of Appeal dismissed Mr Rafiq’s appeal against that decision.²

Statutory framework

[5] Sections 164A–164C were inserted into the Senior Courts Act with effect from 1 February 2026. In *Donellan v Attorney-General*, Kós J set out the process by which s 164A referrals will be processed in this Court:³

- (a) the reference will be determined by a single judge of the Court, as ss 81(2A)(a), 164A and 164B provide;
- (b) before considering whether the proceeding is plainly an abuse of the process of the Court, the judge will consider whether further submissions (beyond the application and anything filed along with it) are needed to fairly determine that question (and its consequence, if affirmative); and
- (c) the judge will then go on to consider the matters provided in s 164B(1) and (2)—namely, whether the proceeding is “plainly an abuse of the process of the court”, and if so, whether the proceeding should be struck out, or whether to make an order or give directions to ensure the proceeding is either disposed of or proceeds in a manner compliant with the Supreme Court Rules 2004.

Further submissions?

[6] I am satisfied that further submissions to fairly determine whether the proceeding is plainly an abuse of process are not required. Mr Rafiq’s six-page notice of application clearly identifies the nature of the proposed appeal. Mr Rafiq has also attempted to file submissions on the leave application. Given the s 164A referral, these were not accepted for filing.⁴ I have nevertheless reviewed them in reaching my decision. The submissions confirm that the basis for the proposed appeal is as set out in the notice of application.

¹ *Rafiq v New Zealand Post Group trading as New Zealand Post* HC Auckland CIV-2024-404-2717 (Minute of Gordon J).

² *Rafiq v New Zealand Post Group trading as New Zealand Post* [2026] NZCA 44 (Katz, Tracey Walker and Robinson JJ).

³ *Donellan v Attorney-General* [2026] NZSC 110.

⁴ See Senior Courts Act 2016, s 164A(2)(b).

Plainly an abuse of process?

[7] The predecessor legislation to ss 164A–164C of the Senior Courts Act was rr 5.35A–5.35C of the High Court Rules 2016. These also enabled abusive proceedings to be struck out prior to service, although the power was only available in the High Court. In *Wolfe v Governor-General of New Zealand*, this Court noted that the new statutory provisions are of similar scope to the former rules.⁵

[8] The r 5.35B strike out power was different to that in r 15.1, which relevantly provides that the High Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action, defence or case.⁶ This Court in *Wolfe* agreed with earlier comments of the Court of Appeal that:⁷

[Rules] 15.1 and 5.35A–5.35C “serve different functions”, and “a misconceived or legally untenable [proceeding] ... which may be struck out under r 15.1 is not, in and of itself, abusive for the purposes of r 5.35B.

[9] The Court of Appeal has similarly held that rr 5.35A–5.35C were not properly directed at incompetence or lack of legal skill.⁸

[10] The same reasoning distinguishes the strike-out power in s 164B from that available to the High Court under r 15.1. In other words, proceedings that are simply unmeritorious or legally untenable are not proper candidates for strike-out under s 164B. Those characteristics do not themselves make a proceeding abusive.

[11] Apparent lack of merit aside, I see no other basis on which the proceeding might be considered an abuse. Mr Rafiq’s notice of application is procedurally compliant. It identifies an intelligible basis for the proposed appeal: Mr Rafiq says the Court of Appeal erred in upholding the High Court’s strike-out decision on the basis that there was real merit to his claim.

⁵ *Wolfe v Governor-General of New Zealand* [2026] NZSC 109 at [31].

⁶ High Court Rules 2016, r 15.1(a).

⁷ *Wolfe*, above n 5, at [26] citing *Te Wakaminenga o Ngā Hapū Ki Waitangi v Waitangi National Trust Board* [2023] NZCA 63, [2023] NZAR 180 at [13]. Footnote omitted.

⁸ *TFD v Auckland District Court* [2022] NZCA 477 at [38]–[39].

[12] I therefore conclude that the proceeding is not plainly an abuse of process and that a direction for the timetabling of submissions should be made.

Result

[13] The Registrar is to set a timetable for submissions.