



Supreme Court of New Zealand

16 September 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**ATTORNEY-GENERAL v MERVYN CHAPMAN
(SC 120/2009)
[2011] NZSC 110**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In October 2000 Mervyn Chapman’s appeal against convictions was dismissed after consideration of written submissions, without an oral hearing, by the Court of Appeal. This was in accordance with the Court of Appeal’s procedure at the time when an appellant was not granted legal aid enabling representation by counsel. In 2002, the Privy Council in *R v Taito* found that the procedure applied by the Court was in breach of the right to appeal and the right to observance of the principles of natural justice safeguarded by the New Zealand Bill of Rights Act 1990. Mr Chapman, who was then two years into a sentence of six years’ imprisonment, was subsequently granted a new appeal and released on bail pending retrial, which did not ultimately proceed. He was discharged under s 347 of the Crimes Act 1961 in July 2004.

Mr Chapman filed proceedings in the High Court, seeking public law compensation from the government for alleged breaches by judicial officers of the rights secured to him by the Bill of Rights Act. Before trial, preliminary questions of law as to the availability of such compensation were removed into the Court of Appeal for determination. The Court of Appeal unanimously held that public law compensation was, in principle, available for judicial breaches of the Bill of Rights Act where correction within the criminal process itself (as occurred here through the second appeal) was inadequate remedy for the breach. In so doing, the Court rejected the Attorney-General’s submission that the direct liability of the Crown for public law damages, affirmed in 1994 in *Baigent’s Case*, was limited to Bill of Rights breaches by the executive branch of government. It further held that the Attorney-General was the proper defendant in the proceedings and that he could not claim the benefit of judicial immunities enjoyed by individual judges. The Court declined to determine whether compensation would be an appropriate remedy in Mr Chapman’s case; such issue was for determination at trial.

The Attorney-General appealed with leave to this Court. By majority (McGrath, William Young and Gault JJ), the Supreme Court has allowed the Attorney-General's appeal on the basis that there is no right to claim public law compensation for judicial breaches of rights. To allow Mr Chapman's claim would be inimical to public interest considerations concerning what is necessary for the proper and effective administration of justice. These include maintaining judicial independence and the desirability of finality in litigation. These policy rationales, which justify personal immunity for judges, also preclude the extension of the right to claim compensation for breaches of rights by the executive government to cover breaches resulting from judicial actions. The majority also takes the view that the provision of a remedy in damages for judicial breach of the Bill of Rights Act is unnecessary because of the availability of remedies within the justice system itself, by way of rights of appeal, rehearing and review. Accordingly, the majority confine the direct cause of action available against the Crown for breach of the Bill of Rights Act, upheld in *Baigent's Case*, to acts of the executive government.

Elias CJ and Anderson J, dissenting, would have dismissed the appeal and allowed Mr Chapman's claim for public law compensation to be determined on its merits. They considered that the immunity of individual judges and the policies behind the immunity do not prevent a claim for damages against the Crown under the principle established in *Baigent's Case*.

The appeal of the Attorney-General is accordingly allowed and the matter remitted to the High Court.

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