

IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2014
[2014] NZSC 103

BETWEEN MALCOLM EDWARD RABSON
Applicant
AND WAYNE SEYMOUR CHAPMAN
Respondent

Court: William Young, Glazebrook and Arnold JJ
Counsel: Applicant in person
S A Barker for the Respondent
Judgment: 6 August 2014

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] Mr Rabson applies for the recall of our judgment of 14 July 2014.¹ In that judgment, the Court declined an application for review of a decision by Glazebrook J adjourning Mr Rabson's application for leave to appeal (on the basis that the most sensible and expeditious course was to apply for recall of the Court of Appeal's judgment).

[2] Mr Rabson submits the decision should be recalled on three basis:

(a) that Glazebrook J should not have participated in the review decision;

¹ *Rabson v Chapman* [2014] NZSC 90.

- (b) if that is not accepted, that the review decision should have been made by five judges; and
- (c) that the decision was in contravention of Mr Rabson's "statutory right of appeal".

[3] The first two points were dealt with explicitly in our review decision. As explained at n 3 of that decision, the Court assumed that s 28(3) of the Supreme Court Act 2003 applies to leave applications. If that is the case, the Court comprises the judges set down to hear that application. Section 28(3) requires the participation of the judge whose decision is the subject of the review.

[4] Mr Rabson's third ground is a repeat of his argument on his review application. We point out that there is no statutory right of appeal. There is only a right to apply for leave to appeal. Mr Rabson's application for leave to appeal is adjourned only and so remains live until granted or dismissed.

[5] The application for recall is therefore dismissed.

The way forward

[6] It appears from his submissions that Mr Rabson does not wish to apply for recall of the Court of Appeal's decision. If Mr Rabson does intend to make an application for recall, then he should inform the Registrar of this Court on or before 5pm, 14 August 2014. If no communication to the Registrar is made by that date, this Court will make a decision on his leave application.

Solicitors:
Buddle Findlay, Wellington for the Respondent