NOTE: THE ORDER MADE BY THE HIGH COURT ON 11 DECEMBER 2012 CONTINUES IN FORCE. THAT ORDER PROHIBITS PUBLICATION OF THE NAMES AND OF ANY DETAIL IDENTIFYING MR RADHI'S WIFE OR HIS CHILDREN, OR ANY INFORMATION WHICH MIGHT LEAD TO THEM BEING IDENTIFIED, OTHER THAN PUBLICATION OF MR RADHI'S NAME AND REFUGEE STATUS.

IN THE SUPREME COURT OF NEW ZEALAND

SC 73/2014
[2014] NZSC 135

BETWEEN	MAYTHEM KAMIL RADHI (AKA MAYTHAM KAMIL RADHI) Applicant
AND	THE NEW ZEALAND POLICE Respondent

Court:	McGrath, William Young and Arnold JJ
Counsel:	R P Chambers and S D Withers for the Applicant J C Gordon QC and W N Fotherby for the Respondent
Judgment:	29 September 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant is charged in Australia as a result of conduct in Indonesia in 2001 involving attempted smuggling of a group of people from Indonesia to Australia. He came to New Zealand in 2009. Australia has requested his extradition.

[2] The District Court held he was eligible for surrender.[1] That decision was reversed in the High Court which held that the equivalent provision in New Zealand,

1 *New Zealand Police v Radhi* DC Manukau CRI-2011-92-11423, 19 March 2012.

for the purposes of the double criminality requirement under s 4 of the Extradition Act 1999, was s 142(fa) of the Immigration Act 1987.[2] That provision made it an offence to wilfully aid or assist another person to unlawfully arrive in New Zealand. The High Court decided that the applicant's conduct, while constituting an offence under Australian law, would not have been an offence in New Zealand under s 142(fa) at the time of his actions. In particular, the offence under s 142(fa) required the actual arrival of the other person and the legislation did not criminalise an attempt to commit the offence.[3]

[3] The Court of Appeal disagreed with the High Court, holding that there was no requirement of actual arrival in New Zealand before the New Zealand offence was committed and that, in any event, an attempt to commit the offence under s 142(fa) would be an offence under New Zealand law.[4] The applicant now seeks leave to appeal to this Court on the ground that the Court of Appeal's judgment was wrong in law.

[4] Section 142(fa) was repealed in 2002. The replacement offence provision is expressed more broadly and in terms which make it clear that it applies whether or not the other person actually enters New Zealand.[5] As a result the proposed appeal raises no question of general public importance in terms of s 13 of the Supreme Court Act 2003 as it would relate solely to the position of the applicant.

[5] Nor will a substantial miscarriage of justice occur if the appeal is not heard. Although aspects of the Court of Appeal's reasoning might be arguable, there is "no sufficiently apparent error … of such a substantial character that it would be repugnant to justice to allow it to go uncorrected" in the applicant's particular case.[6] In this respect, we are satisfied that the applicant's submissions that s 142(fa) does not have extraterritorial effect is not an arguable one.

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2 *Radhi v New Zealand Police* [2013] NZHC 163.
3 See at [47] and [54].
4 *The New Zealand Police v Radhi* [2014] NZCA 327.
5 See Immigration Act 1987, s 142(eb). The 1987 Act was repealed in 2010 and the current relevant offence provision is s 343 of the Immigration Act 2009.
6 See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, [2006] 3 NZLR 522 at [5].

[6] Overall, and assuming but not deciding that we have jurisdiction,[7] we do not consider that the interests of justice require that we hear and determine the proposed appeal. The application for leave to appeal is dismissed.

[7] No order for costs is made.

Solicitors:
Meredith Connell, Auckland for the Respondent

[7] It is not necessary for us to address a further Crown submission on this point.