

IN THE SUPREME COURT OF NEW ZEALAND

SC 142//2013
[2014] NZSC 23

BETWEEN JOHN MORGAN MACKENZIE
Applicant

AND LEGAL SERVICES COMMISSIONER
Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicant in person
R J Gordon for respondent

Judgment: 20 March 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant filed what purported to be an application for leave to appeal from a judgment of the Court of Appeal of 23 July 2013¹ in which it dismissed an application by the applicant for special leave to appeal against a judgment of Dobson J delivered on 21 November 2012² dismissing an appeal from the Legal Aid Tribunal.³

[2] As explained in a judgment delivered by William Young J on 6 December 2013, this Court has no jurisdiction to consider an appeal from a decision to refuse leave or special leave to appeal to the Court of Appeal.⁴ The Court therefore had no jurisdiction to consider the applicant's proposed appeal and the Registrar's decision was confirmed. However, William Young J directed that the application be treated as

¹ *MacKenzie v Legal Services Commissioner* [2013] NZCA 326.

² *MacKenzie v Legal Services Commissioner* [2013] NZHC 3098.

³ *Re CE (Civil)* [2012] NZLAT 023.

⁴ *MacKenzie v Legal Services Commissioner* [2013] NZSC 140.

if it sought leave to appeal from the High Court judgment. Jurisdiction for such an appeal is provided for under s 14 of the Supreme Court Act 2003.

[3] The applicant has filed further submissions. They proceed in part on his continuing and mistaken belief that he has a right of appeal against the Court of Appeal decision⁵ but he now also seeks leave to appeal against the High Court decision.

[4] The applicant has been refused legal aid for proceedings against the Crown Health Financing Agency. These proceedings arise out of the death of his son following a motorcycle accident. It is common ground that a heart valve was removed from his son's heart and implanted in another person. The applicant also believes that his son's heart was removed from, and not returned to, his body. It is quite likely that this is so. Consent to remove organs for donation had apparently been sought and declined. We make no comment on whether the applicant ever had a viable claim in relation to these events because the applicant's primarily relevant difficulty is under the Limitation Act 1950.

[5] Legal aid for proceedings against the Crown Health Financing Authority was declined on the basis that there were insufficient prospects of success to warrant a grant. One of the reasons for this was the view that any claim was barred by the Limitation Act. In March 2005, the applicant was notified (in response to enquiries made to the National Transplant Donor Co-ordination Office) of the removal of the valve and its implantation in another person. The view of the Legal Aid Tribunal and Dobson J was that, at the very latest, time began to run in that month. Proceedings were not commenced against the Crown Health Financing Agency within the following six years⁶ and, on the basis that time did begin to run in March 2005, any claim is now barred by limitation.

[6] The applicant's response is that time did not begin to run until his receipt of a letter of 24 November 2006 from the Crown Health Financing Agency denying liability, a view which Dobson J in the High Court understandably did not accept.

⁵ He also considers that he has a right of appeal against a decision of Dobson J declining leave to appeal: *MacKenzie v Legal Services Commissioner* [2013] NZHC 511.

⁶ Proceedings have subsequently been commenced, in November 2012.

This issue does not raise a question of general or public importance, and there is no appearance of error. There is also the consideration that although the decision of the Court of Appeal is not itself subject to appeal, it involved a substantial review of Dobson J's judgment. Against that background, the "exceptional circumstances" test under s 14 of the Supreme Court Act 2003 has not been satisfied.

Solicitors:
MinterEllisonRuddWatts, Wellington for Respondent