

IN THE SUPREME COURT OF NEW ZEALAND

SC 130/2014
[2015] NZSC 79

BETWEEN VINCENT ROSS SIEMER
Applicant

AND CLARE O'BRIEN
First Respondent

ATTORNEY-GENERAL
Second Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: Applicant in person
D L Harris for First and Second Respondents

Reissued: 5 June 2015

Effective date
of Judgment: 25 February 2015

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the second respondent costs of \$2,500, plus reasonable disbursements.**
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REASONS

[1] The applicant, Mr Siemer, seeks leave to appeal directly to this Court against the judgment of Williams J in *Siemer v O'Brien*.¹ Accordingly, in addition to satisfying the Court that it is necessary in the interests of justice that we hear the appeal,² Mr Siemer must also satisfy the Court that there are “exceptional circumstances” which justify bringing the appeal directly to this Court.³

¹ *Siemer v O'Brien* [2014] NZHC 2886.

² Supreme Court Act 2003, s 13.

³ Section 14.

[2] By way of background, Mr Siemer issued judicial review proceedings in respect of certain decisions of the Judicial Conduct Commissioner dismissing complaints he had made. Toogood J dismissed his application.⁴ Mr Siemer then filed an appeal against this decision. That did not proceed, however, as Mr Siemer did not pay security for costs and his challenge to the requirement to do so was unsuccessful.⁵ Mr Siemer then issued fresh judicial review proceedings against the Judicial Conduct Commissioner challenging the same decisions. Williams J struck the proceedings out as an abuse of process.⁶ Mr Siemer filed an appeal against that decision. After the Registrar had fixed security for costs, Mr Siemer attempted to apply directly to a Judge of the Court under s 61A(1) of the Judicature Act 1908 for dispensation from the requirement to pay, thus by-passing the review process provided for in r 35 of the Court of Appeal (Civil) Rules 2005. The Registrar refused to accept Mr Siemer's application for filing and his appeal was ultimately deemed abandoned under the Rules. Mr Siemer then issued judicial review proceedings seeking to challenge the decision of the Registrar of the Court of Appeal fixing costs in his appeal and rejecting his application to have security for costs dealt with by a Judge. It was these proceedings that were dismissed by Williams J.

[3] Initially, Mr Siemer had joined the Attorney-General as a party to the proceedings. However, in *Attorney-General v Siemer* a Full Court of the High Court made orders under s 88B of the Judicature Act 1908 declaring Mr Siemer to be a vexatious litigant and requiring that he obtain the Court's leave before instituting civil proceedings against, among others, the Attorney-General.⁷ Mr Siemer accepted that he could not proceed against the Attorney-General without leave and did not seek leave. Rather, he wished to maintain his proceedings simply against the Registrar of the Court of Appeal. As she abided the decision of the Court, Mr Siemer considered that he was entitled to proceed against her simply by way of formal proof. However, Williams J permitted counsel for the Attorney-General to appear to act as contradictor to Mr Siemer's application.

⁴ *Siemer v Judicial Conduct Commissioner* [2012] NZHC 1481.

⁵ *Siemer v Judicial Conduct Commissioner* CA442/2012, 5 September 2012 and *Siemer v Judicial Conduct Commissioner* [2012] NZSC 92 and [2012] NZSC 95.

⁶ *Siemer v Judicial Conduct Commissioner* [2013] NZHC 1655.

⁷ *Attorney-General v Siemer* [2014] NZHC 859.

[4] The point on which Mr Siemer seeks leave to appeal is not entirely clear from the papers. In his application, he refers simply to the decision of Williams J to allow the Attorney-General to participate in the hearing; in his written submissions he also raises the question of the relationship between the powers of a single judge under s 61A(1) of the Judicature Act and the security for costs regime provided for in the Rules.

[5] As to the first point, the application does not raise any arguable point. It is commonplace for judicial and other officers to abide the decision of the court and, if there is no other contradictor, for the Attorney-General to appear and make submissions. As to the second point, it has already been addressed by this Court in litigation involving Mr Siemer.⁸ Accordingly, this application does not raise a matter of general or public importance.

[6] In any event, Mr Siemer's application does not identify any exceptional circumstances sufficient to justify an appeal directly to this Court.

[7] The application for leave to appeal is dismissed. The applicant must pay the second respondent costs of \$2,500 plus reasonable disbursements.

Solicitors:
Crown Law Office, Wellington for Respondents

⁸ See *Siemer v Stiassny* [2013] NZSC 110, *Siemer v Stiassny* [2013] NZSC 115 and *Siemer v Official Assignee* [2014] NZSC 42.