

IN THE SUPREME COURT OF NEW ZEALAND

SC 93/2017
[2017] NZSC 146

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND JUSTICES WILLIAM YOUNG,
ARNOLD, GLAZEBROOK, O'REGAN
AND ELLEN FRANCE
Respondents

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person
A F Todd for Respondents

Judgment: 28 September 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed as an abuse of process.

REASONS

[1] The applicant issued judicial review proceedings in the High Court against the Judicial Conduct Commissioner naming Judges of this Court as second respondents. Subsequently:

- (a) Crown Law applied for the Judges to be removed from the proceedings;
- (b) the High Court ordered the removal of the Judges from the proceedings and the applicant to pay costs;¹

¹ *Rabson v Judicial Conduct Commissioner* HC Wellington CIV-2017-485-133, 7 April 2017 (Minute of Ellis J); and *Rabson v Judicial Conduct Commissioner* HC Wellington CIV-2017-485-133, 8 June 2017 (Minute of Faire J).

- (c) the applicant filed an appeal to the Court of Appeal against the order for costs;
- (d) the applicant then sought dispensation from the requirement to pay security for costs in the Court of Appeal;
- (e) the Registrar of the Court of Appeal refused to dispense with security for costs;
- (f) the applicant then applied to have the Registrar's decision reviewed;
- (g) a single Judge of the Court of Appeal upheld the Registrar's decision;² and
- (h) the applicant now seeks leave to appeal against the single Judge's decision.

[2] Earlier proceedings by the applicant against the Judicial Conduct Commissioner in which the applicant named judges as respondents followed the same course.³ As well, in a third set of proceedings of the same kind, the Supreme Court itself was struck out as a respondent.⁴ As a result, the applicant knows that:

- (a) the High Court has held, in decisions which have not been successfully challenged, that the joinder of judges in review proceedings against the Judicial Conduct Commissioner is improper;⁵
- (b) if he does so, they will be removed⁶ and he will be ordered to pay costs on their removal;⁷ and

² *Rabson v Judicial Conduct Commissioner* [2017] NZCA 349 (French J).

³ See *Rabson v Judicial Conduct Commissioner* [2017] NZSC 74 and the judgments below.

⁴ See *Rabson v Judicial Conduct Commissioner* [2016] NZHC 884 [*Rabson* (HC)].

⁵ At [5].

⁶ *Rabson v Judicial Conduct Commissioner* HC Wellington CIV-2016-485-781, 1 November 2016 (Minute of Williams J); and *Rabson* (HC), above n 4.

⁷ *Rabson v Judicial Conduct Commissioner*, above n 6, at [2].

- (c) if he wishes to proceed with an appeal to the Court of Appeal he will be required to provide security for costs on the application of the principles established in *Reekie v Attorney-General*.⁸

[3] He also knows that if he seeks leave to appeal to this Court against non-dispensation of the requirement to provide security, his application will have to be dealt with by a panel of judges which will include one or more of the judges originally named as parties to the review proceedings and in whose nominal favour the order for costs was made.

[4] We are satisfied that the applicant's conduct constitutes an abuse of process, exemplified by circularity, repetitiveness and general vexatiousness. It is accordingly dismissed. A copy of this judgment is to be provided to the Solicitor-General.

Solicitors:
Crown Law Office, Wellington for Respondents

⁸ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.