IN THE SUPREME COURT OF NEW ZEALAND

SC 147/2016
[2017] NZSC 22

	BETWEEN	MALCOLM EDWARD RABSON Applicant
	AND	ATTORNEY-GENERAL Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
H M Carrad for Respondent

Judgment: 3 March 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Costs of $2,500 are awarded to the respondent.

REASONS

[1] The applicant seeks leave to appeal directly from a decision of the High Court striking out his application for judicial review.[1]

[2] The background to his application was as follows:

(a) In *Greer v Smith*, this Court dismissed an application made by Vincent Siemer for review of a decision made by O'Regan J to refuse Mr Siemer's application for access to Court documents.[2] The Court found there was no statutory right to seek a review of such a decision by a single judge and, therefore, no statutory jurisdiction to review the decision.

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1 *Rabson v Attorney-General* [2016] NZHC 2876 (Ellis J).
2 *Greer v Smith* [2015] NZSC 196, (2015) 22 PRNZ 785.

(b) Mr Rabson disagreed with this Court's decision in *Greer v Smith*. He asked the Attorney-General to notify Cabinet of what he said was this Court's "non-compliance" with s 28 of the Supreme Court Act 2003. The Attorney-General declined to do so.

(c) Mr Rabson then applied to the High Court for judicial review of the Attorney-General's refusal to do as Mr Rabson asked. The Attorney-General applied to the High Court to strike out the application on the grounds that it did not disclose any reasonably arguable cause of action and was frivolous, vexatious and an abuse of process.

[3] Ellis J struck out the application for judicial review for three reasons.

[4] The first was that the Cabinet manual is informative, rather than directive, and is not independently justiciable.[3] Even if it were, she found that para 4.3, which deals with the role of the Attorney-General within Cabinet, is concerned only with the Attorney-General's relationship with the executive branch of government, and has no bearing on the relationship between the Attorney-General and the judiciary.[4] There was, therefore, no obligation for the Attorney-General to notify Cabinet, as Mr Rabson had argued there was.

[5] The second reason was that Mr Rabson's claim was concerned with the merits of this Court's decision in *Greer v Smith*, and was effectively asking the High Court to make a finding that that decision was wrong in law, something the High Court could not do.[5]

[6] The third was that the proceedings were seeking by a side-wind to re-litigate a matter that has already been determined against Mr Siemer in *Greer v Smith*.[6]

[7] The Judge also considered that the proceedings were an abuse of process.[7]

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3 At [9].
4 At [10]–[12].
5 At [13].
6 At [14].
7 At [15].

[8] Section 14 of the Supreme Court Act 2003 provides that this Court must not give leave to appeal directly to it against a decision made in a proceeding in the High Court unless satisfied there are "exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court".[8] Mr Rabson says such exceptional circumstances are present in this case because the decision of Ellis J "sets a dangerous and unsafe precedent in respect to the foundation of law in New Zealand's democracy" and is "in direct contradiction to existing constitutional law".

[9] We do not consider there are any exceptional circumstances justifying a grant of leave in this case. We see no appearance of error in the approach taken in the High Court and we see the attempted appeal as a continuation of the abuse of process identified by Ellis J in her decision.

[10] For these reasons leave is declined.

[11] We award costs of $2,500 to the respondent.

Solicitors:
Crown Law Office, Wellington for Respondent

[8] This provision applies to this application despite the repeal of the Supreme Court Act 2003: Senior Courts Act 2016, sch 5 cl 10.