

IN THE SUPREME COURT OF NEW ZEALAND

SC 4/2017
[2017] NZSC 39

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND JUDICIAL CONDUCT
COMMISSIONER
Respondent

Court: Arnold, O'Regan and Ellen France JJ

Counsel: Applicant in person
L Theron and C P A Cross for Respondent

Judgment: 27 March 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

[1] The applicant, Mr Rabson, complained to the respondent, the Judicial Conduct Commissioner, about certain conduct of Judges of this Court. The Commissioner dismissed the complaint, on the basis that it was outside his jurisdiction because it went to the legality or correctness of a judicial decision.¹ Mr Rabson then issued judicial review proceedings seeking to challenge the Commissioner's decision not to engage with the merits of his complaint. On the Commissioner's application, Dobson J struck the proceedings out, on the grounds that they disclosed no tenable cause of action and were, in any event, an abuse of process.²

¹ See Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 8(2).

² *Rabson v Judicial Conduct Commissioner* [2016] NZHC 3162 at [17] and [21].

[2] On 12 January 2017, Mr Rabson filed an application for leave to appeal against Dobson J’s decision directly to this Court. On the same day he also filed an appeal against Dobson J’s decision in the Court of Appeal. According to the Commissioner, Mr Rabson subsequently filed an application in the Court of Appeal to dispense with security for costs, which was declined by the Registrar. As far as we know, that is where matters rest in that Court.

[3] On an application for a direct appeal to this Court from the High Court, an applicant must meet the usual test for leave³ and establish as well that there are “exceptional circumstances” which justify a direct appeal.⁴ We are satisfied that neither test is met in this case.

[4] First, this proposed appeal raises no question of general or public importance. Rather, it concerns the application of settled principles in relation to strike outs to the particular circumstances of this case. Mr Rabson has raised nothing which suggests that Dobson J may have erred in his application of the relevant principles or that there is a risk of a substantial miscarriage of justice.

[5] Second, no exceptional circumstances have been identified which justify a direct appeal to this Court. The matters raised by Mr Rabson on this point appear to go to the strength of his proposed appeal. But that is not a sufficient reason for a direct appeal.

[6] The application for leave to appeal is dismissed. The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Meredith Connell, Wellington for Respondent

³ Supreme Court Act 2003, s 13 (now replaced by the Senior Courts Act 2016, s 74).

⁴ Supreme Court Act, s 14 (now s 75 of the Senior Courts Act).