



**Supreme Court of New Zealand
Te Kōti Mana Nui**

12 March 2020

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

MINISTER OF JUSTICE v KYUNG YUP KIM

(SC 57/2019) [2020] NZSC 18

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Suppression

The High Court order prohibiting publication of the identity of the countries that have provided details about their dealings with the People’s Republic of China in news media or on the internet or other publicly available database remains in force.

Reasons

The Supreme Court gave leave to hear an appeal and cross-appeal relating to the decision of the Court of Appeal in *Kim v Minister of Justice of New Zealand* (the substantive appeal).¹

In the lead up to the hearing an issue arose about the composition of the panel to hear the substantive appeal. The issue initially concerned the ability of William Young J to sit given his role as the chairperson of the Royal Commission of Inquiry into the Attack on Christchurch Mosques on

¹ The hearing of the substantive appeal took place on 25 and 26 February 2020 and the judgment is reserved. The case synopsis for the substantive appeal is available at <https://www.courtsofnz.govt.nz/assets/CS-Minister-of-Justice-v-Kim-SC-57-2019.pdf>.

15 March 2019. This issue was resolved by the Judge's decision not to sit, not because of his chairpersonship of the Royal Commission, but because counsel assisting the Commission was to be counsel for the intervener and would be appearing before the Court at the hearing of the substantive appeal.

However, because the two other permanent members of the Court were not able to sit, Arnold J, an acting Judge of the Court, was added to the panel. Arnold J is also the chairperson of the Government Inquiry into Operation Burnham and Related Matters (the Inquiry). The Court considered that, because the issue as to the impact of membership of a Royal Commission or a government inquiry on eligibility to sit on a hearing had been raised, the issue needed to be resolved. A hearing to determine this question was held in the Supreme Court on 4 December 2019.

As the hearing of the substantive appeal was scheduled for February 2020, the Court issued a results judgment on 10 December 2019 making an order that there was no impediment to Arnold J sitting on the panel to hear the substantive appeal. The Court has now released its reasons.

The Court held that there was no general bar on a judge who has been appointed to a government inquiry (or a Royal Commission) from sitting on an appeal in the Supreme Court. The test to be applied was the conventional test for ineligibility set out in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* which requires the Court to consider whether, subject to qualifications relating to waiver or necessity, a fair minded observer might reasonably consider that the judge might not bring an impartial mind to the resolution of the question before the judge. The Court also said that the same test applies whether the question of ineligibility concerns a permanent or acting judge who is a member of a government inquiry (or a Royal Commission). In this case, there was nothing to suggest that the subject matter of the Inquiry or its conduct gave rise to any apprehension of a lack of impartiality on the part of Arnold J in hearing the substantive appeal. Therefore, there was no impediment to Arnold J sitting on the panel to hear the substantive appeal.

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