

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 119/2023
[2024] NZSC 102

BETWEEN JOHN HOWARD CARTER
Applicant

AND CAPITAL AND COAST DISTRICT
HEALTH BOARD
First Respondent

AND HUTT VALLEY DISTRICT HEALTH
BOARD
Second Respondent

AND ATTORNEY-GENERAL
Third Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person
I H V Reuvecamp for First and Second Respondents
S M Kinsler and C E Sinclair for Third Respondent

Judgment: 16 August 2024

JUDGMENT OF THE COURT

- A The application for recusal is dismissed.**
- B The application for recall is dismissed.**
- C There is no order as to costs.**
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REASONS

[1] Mr Carter applies for the recall of our decision of 29 July 2024, dismissing his application for leave to appeal.¹

¹ *Carter v Capital and Coast District Health Board* [2024] NZSC 85 [Leave decision].

Recusal

[2] Mr Carter submits that the current panel should not decide this application.

[3] There are no proper grounds put forward for the current panel members to recuse themselves.

Background

[4] Mr Carter's application for leave to appeal related to proceedings filed in the High Court. The High Court had held that Mr Carter's statement of claim disclosed no reasonably arguable cause of action.²

[5] That decision was upheld by the Court of Appeal.³

[6] In dismissing his application for leave to appeal, this Court held that nothing raised by Mr Carter threw doubt on the reasoning of the Courts below.⁴

Grounds of application

[7] Mr Carter submits that there is a very serious reason the judgment should be recalled in that the Court did not take into account recommendations of the Royal Commission of Inquiry into Abuse in State Care.⁵ Mr Carter gives a number of matters he says are examples of this Court ignoring the Royal Commission's recommendations.

Our assessment

[8] A decision of this Court, whether concerned with leave to appeal or a substantive appeal, is, and must be, final.⁶ A judgment will only be recalled in exceptional circumstances, being those identified in *Horowhenua County v Nash*

² *Carter v Capital and Coast District Health Board* [2022] NZHC 3018 (Churchman J).

³ *Carter v Capital and Coast District Health Board* [2023] NZCA 466 (Brown and Goddard JJ).

⁴ Leave decision, above n 1, at [10].

⁵ Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions *Whanaketia: Through Pain and Trauma, from Darkness to Light* (Wellington, 24 July 2024).

⁶ *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [20].

(No 2), as applied by this Court in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)*.⁷

[9] Mr Carter's application does not raise any exceptional circumstances that would justify recall. None of the examples given by Mr Carter appear to relate to recommendations made by the Royal Commission. Rather, most of the examples effectively reprise submissions already dealt with in our judgment on the application for leave. In the circumstances we do not consider the Royal Commission's recommendations are relevant to whether or not Mr Carter's statement of claim disclosed a reasonably arguable cause of action.

[10] There is thus no reason to recall our judgment.

Result

[11] The application for recusal is dismissed.

[12] The application for recall is dismissed. As the respondents were not required to file submissions, there is no order as to costs.

Solicitors:
Vida Law, Wellington for First and Second Respondents
Meredith Connell, Wellington for Third Respondent

⁷ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].