

NZLR.

**NOT
RECOMMENDED**

IN THE COURT OF APPEAL OF NEW ZEALAND

CA236/88

**IN THE MATTER of Part I Judicature
Amendment Act 1972**

BETWEEN CLARENCE JOHN FALOON
Applicant

**AND THE COMPTROLLER OF
CUSTOMS**
First Respondent

**AND THE COMMISSIONER OF
INLAND REVENUE**
Second Respondent

CA235/88

**UNDER the Crown Proceedings Act
1950**

**IN THE MATTER of the Crown Proceedings Act
1950 Section 7(1)**

BETWEEN CLARENCE JOHN FALOON
Appellant

AND THE ATTORNEY-GENERAL
Respondent

Coram: Richardson P
Gault J
Blanchard J

Hearing: 15 June 1998

Counsel: G L Lang for Official Assignee in Bankruptcy
J H Coleman for Respondents
C J Faloon in person

Judgment: 15 June 1998

JUDGMENT OF THE COURT DELIVERED BY GAULT J

In a judgment delivered on 16 March 1998 this Court adjourned by consent applications on behalf of the respondents to strike out both appeals for want of prosecution. At the same time an application by Mr Faloon, who has been adjudicated bankrupt, to be joined as a party in a different capacity, as representative of his deceased father's estate, was dismissed.

Mr Faloon now seeks conditional leave to appeal to the Privy Council against the decision refusing to join him as a party to the proceedings in a different capacity. It is opposed both by the Official Assignee who stands in the shoes of the appellant and by the respondents.

The decision dismissing the application for joinder was not a final judgment in the proceedings so that the present application is to be considered under r2(b) of the Order in Council of 1910 which permits appeals:

At the discretion of the Court of Appeal from any other judgment of that Court whether final or interlocutory if in the opinion of that Court the question involved in the appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision.

The question involved is only the question of whether (in effect) the estate of the late Thomas John Faloon should be made a party to the appeals. That is not a question of great general or public importance. Nor is it a question which in our view is otherwise of a kind which should be submitted to the Privy Council for decision. The question arises because the responsibility for the appeals now is that of the Official Assignee and Mr Faloon is anxious to continue involvement to pursue a series of issues on which he harbours a sense of injustice. We are entirely satisfied however that those issues are outside the scope of the present appeals in this Court and could not be

resolved on an appeal to the Privy Council against our judgment of 16 March. They cannot therefore provide any support for the present application.

The application for conditional leave to appeal is dismissed.

On the substantive appeals, the applications to strike out are supported by evidence showing inordinate delay in prosecuting them. The judgment appealed from was delivered in 1988. No acceptable explanation for the delay of that magnitude has been advanced. The Official Assignee has taken advice and now does not oppose the applications. In those circumstances, and because there has not been identified any point in the appeals with any real chance of success, we accept they should be struck out. There is an order accordingly.

We considered whether the applications to strike out the appeals should be further adjourned to enable Mr Faloon to apply to the High Court for an extension of time within which to appeal to that Court under s67 Insolvency Act against the decision of the Official Assignee not to contest the strike out application. But Mr Faloon was informed both by the office of the Official Assignee and by the Registrar of this Court that it is the High Court not this Court which has the jurisdiction to entertain such appeals. He has taken no steps and has told us he cannot. No point would be served by any further adjournment therefore.

Mr Faloon filed on 2 June 1998 another application seeking orders on a number of other matters. This Court has no jurisdiction to deal with originating applications. The matters concerned do not arise in the only application before us on which Mr Faloon properly has a right to be heard. That application also must be refused. Only one other aspect calls for comment. It is the application by Mr Faloon for appointment of amicus curiae to deal with issues set out in the application. They are not issues properly before this Court and so there can be no justification for any appointment by this Court of counsel to assist. That application also is declined.

Solicitors
Crown Law Office, Wellington, for Crown

