IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2008-485-1203

UNDER	the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990, the Judicature Act 1908, the Judicature Amendment Act 1972,the United Nations International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child
IN THE MATTER OF	an appeal and judicial review of a decision of the Human Rights Review Tribunal
BETWEEN	JAMES ROBERT REID Appellant
AND	NEW ZEALAND FIRE SERVICE COMMISSION First Respondent
AND	CROWN LAW OFFICE Second Respondent
AND	PRIVACY COMMISSIONER Third Respondent

CIV-2008-485-2043

UNDER	the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990, the Judicature Act 1908, the Judicature Amendment Act 1972, the United Nations International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child
BETWEEN	JAMES ROBERT REID Applicant/Intended Appellant
AND	NEW ZEALAND FIRE SERVICE COMMISSION Respondent

Hearing: 18 November 2009

Counsel: Appellant in person
P A McBride for NZ Fire Service Commission
D M Consedine for Crown Law Office
K Evans for Privacy Commissioner

Judgment: 19 November 2009

RESERVED JUDGMENT OF DOBSON J

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[1] There are applications for leave to further appeal to the Court of Appeal pursued by Mr Reid in both these proceedings. They were heard together, and can conveniently be determined together.

[2] The first of the proceedings, CIV-2008-485-1203 (the substantive proceedings) related to an appeal from a decision of the Human Rights Review Tribunal. That decision determined Mr Reid's lack of entitlement to access documents held by the Crown Law Office in respect of proceedings commenced to have Mr Reid declared a vexatious litigant, in which it acted on instructions from the Attorney-General. The formal position of the New Zealand Fire Service Commission (the Commission) in those proceedings is still not accepted by Mr Reid. However, a decision made by Clifford J at a relatively early stage of the proceedings to discontinue Mr Reid's proceedings as against the Commission, in reliance on Mr Reid's own articulation of his position in respect of the Commission, was subsequently confirmed by Wild J, and was also accepted by me.

[3] The argument on the appeal related to the entitlement of the Crown Law Office to invoke litigation privilege in respect of documents in its possession, which referred to Mr Reid. With minor specific exceptions, I upheld the Tribunal's decision that privilege was properly invoked, thereby bringing the documents within an exception to the obligations that would otherwise arise to disclose such documents to Mr Reid under the Privacy Act 1993.

[4] The second proceedings, CIV-2008-485-2043 (the costs appeal), constituted a separate challenge to the entitlement of the Commission to costs against Mr Reid in relation to its earlier involvement in the substantive proceedings. Again, I upheld the Tribunal's costs order in favour of the Commission. Mr Reid seeks leave also to pursue a further appeal on that matter.

[5] The test to be applied in considering such applications for leave is provided for in *Waller v Hider* [1998] 1 NZLR 412 (CA). The proposed appeal must raise some question of law or fact capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of a further appeal.

The substantive appeal

[6] Mr Reid's grounds for his application for leave constituted nine wide-ranging points, attacking the manner in which I had dealt with the appeal, and the conclusions reached in determining it. Whilst he robustly advanced oral argument in expanding these criticisms, he failed to attribute importance to any of them, beyond the part a re-argument of the issues might play in further pursuit of his personal crusade. That crusade arises out of the circumstances of his dismissal by the Commission, and then the involvement of the Commission and the Crown Law Office in attempts to have him declared a vexatious litigant. That initiative had been taken in late 1998 on the basis of his pursuit of 18 sets of proceedings bearing in some way on his employment, and eight sets of family-related proceedings.

[7] At the conclusion of argument, I indicated to Mr Reid that he had not made out any form of requisite importance to justify a grant of leave to further appeal. I can now shortly set out my reasons for coming to that view.

[8] The first ground relied on by Mr Reid was that I had failed to carry out my statutory obligations pursuant to s 18 of the Oaths and Declarations Act 1957. That presumably reflects Mr Reid's opinion that I had failed to "do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill will". In that context, it is conveniently considered with the third of the grounds,

namely that I demonstrated bias in that it is unconstitutional, undemocratic and against the principles of natural justice for (implicitly) a judicial officer who has previously been a law practitioner to adjudicate on the extent to which a legal doctrine (ie privilege) overrides statute law (ie the Privacy Act), to favour legal practitioners.

[9] As traversed in his oral comments, Mr Reid's first ground was simply a personal attack on me: I had failed to accept Mr Reid's point of view, and had been motivated to protect others involved, in particular the Chairman of the Human Rights Review Tribunal. In the absence of any articulated reasons for this perception, it is not a ground that can advance the sort of importance required to warrant a second appeal.

[10] Similarly, the allegation of bias because of adherence to, and respect for, well-settled principles of legal professional privilege would need something more than the fact of an outcome contrary to Mr Reid's wishes, to give it credence as a potential ground for further appeal. New Zealand's judicial system is not structured in any way that would facilitate persons other than judicial officers (drawn with few exceptions from the ranks of the practising profession) determining the scope of claims to privilege. The essence of Mr Reid's argument was that "an outsider", and in particular someone claiming disadvantage by virtue of having to act for himself as Mr Reid did, ought to have some other venue in which to air his complaints at the way the law in relation to privilege is applied. That "systemic" complaint does not conform with the notions of importance needed for leave to further appeal.

[11] I was also criticised for not giving sufficient consideration to the allegedly dishonest purpose of the litigation commenced by the Crown Law Office, which Mr Reid argued should have been acknowledged as in some way curtailing the entitlement of the Crown Law Office to raise legal professional privilege on behalf of its client. That attack as to motive for the vexatious litigant proceedings is a matter of perception. On argument of the appeal, I was certainly not in a position to evaluate whether it was justified, even if I had acknowledged any potential relevance in the point. I am satisfied that it is not a matter of importance that would warrant a further appeal.

[12] The fifth ground is that I failed to give sufficient consideration to the status of the Attorney-General who, as a law officer, was arguably not entitled to claim legal professional privilege. I dismissed the notion that the Attorney-General ought to conduct litigation under a peculiar disadvantage, and whilst the point is novel and could well be important, I am not prepared to acknowledge that it is a credible one.

[13] The sixth ground is that I erred in dismissing the appeal without inspecting all the documents for which privilege had been claimed. Mr Reid could not point to any principle requiring a Court, on determination of claims as to privilege, to uniformly inspect the documents in issue. A conventional approach to the process is for a Judge or Associate Judge to call for documents for which privilege has been claimed when there is some basis for a prima facie concern that privilege is wrongly claimed. That approach might validly vary as between circumstances and Judges, and again I am not persuaded that it raises a point of importance which would contribute to the justification for a further appeal.

[14] The seventh ground was that I failed to determine whether the information withheld was official information subject to disclosure under the Official Information Act 1982. As Mrs Evans emphasised, that criticism completely misconceives the origin and rationale for the entire proceedings. The documents were requested because of their status as personal information in respect of Mr Reid. The jurisdiction of, first, the Privacy Commissioner, and then the Tribunal, depended on the dispute relating to documents of that status. An assertion that disclosure of some of the documents ought also to have been evaluated by reference to the rules for disclosure of official information under an entirely different Act goes beyond the widest possible parameters of matters in issue in the present proceedings.

[15] Allied to the sixth ground was the eighth ground, namely that I failed to give proper and sufficient consideration to the "established process of determining legal professional privilege under common law, the Official Information Act 1982 and the Evidence Act 2006". For the reasons given in respect of grounds 6 and 7, this also fails to raise a matter of requisite importance.

[16] The last ground was that because I had effectively allowed the appeal, in Mr Reid's view, then I ought not to have granted costs in favour of the respondents. That notion involves two misconceptions. First, the only part of the argument which resulted in an outcome advancing Mr Reid's interests was a discrete argument advanced by Mrs Evans on behalf of the Privacy Commissioner. On that issue, I took a different view from that of the Tribunal. Mr Reid neither endorsed nor sought to be associated with the argument. It did not constitute part of his appeal, and I explicitly acknowledged that the outcome on the point did not constitute an aspect of "success" of his own appeal.

[17] Secondly, my judgment did not order costs in favour of the respondents against him. I provisionally recognised that there may be scope for a costs award in favour of either or both of the Crown Law Office and the Privacy Commissioner, but did no more than inviting them to file Memoranda. None have thus far been received. Accordingly, any issue in respect of costs in the substantive appeal is presently moot.

[18] For all these reasons, leave cannot be justified in respect of the substantive proceedings.

The costs appeal

[19] Mr Reid accepted that unless there was some change to the outcome in the substantive appeal, then there was no important issue that could be re-argued on the costs appeal.

[20] Mr McBride criticised the application for leave to appeal the costs determination as entirely misconceived. It relates to my upholding a costs order for $3,000 made by the Tribunal and does not involve any question of law at all. The costs jurisdiction is discretionary in the Tribunal, and my appellate consideration of it was entirely conventional.

[21] For these reasons, there is no prospect of Mr Reid making out requisite importance in relation to the costs appeal, and it is also dismissed.

[22] Mr McBride sought costs on the Commission's opposition to leave for appeal. It is entitled to costs which I fix on a 2B basis.

Dobson J

Solicitors:
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