

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 23/2006  
[2006] NZSC 40**

**ANTHONY KEVIN PETERS**

v

**THE QUEEN**

Court: Blanchard, Tipping and McGrath JJ

Counsel: T W Fournier for Appellant  
F Guy Kidd and C Inglis for Crown

Judgment: 7 June 2006

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] Mr Peters seeks leave to appeal against a pre-trial decision by the Court of Appeal under s 379A of the Crimes Act 1961 allowing an appeal by the Solicitor General against a severance order and instead ordering a joint trial of Mr Peters and a co-accused on a charge of murder. He seeks to distinguish *R v Clark*<sup>1</sup> in which this Court held that s 379A permits only one appeal from a pre-trial ruling, either to the Court of Appeal (as has occurred in this case) or direct to this Court. He argues that

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<sup>1</sup> [2005] 2 NZLR 747.

where it was not the accused but the Crown which chose to take the matter to the Court of Appeal and was successful, an accused has not yet exercised any right of appeal under s 379A. Presumably he would also have to say that where the accused succeeds in the Court of Appeal in overturning a pre-trial ruling, the prosecutor still has the right to apply for leave to bring the matter to this Court.

[2] Such an interpretation is inconsistent with the language of s 379A, particularly when it is read in the context of the entirety of Part 13 of the Act. It receives no support from what was said in *Clark* concerning the policy of the statutory scheme for pre-trial criminal appeals, which is to limit trial delay arising from the appeal process. Section 379A provides for an appeal to the Court of Appeal or, alternatively, an appeal to this Court by leave. Regardless of the outcome in the Court of Appeal, if that is the option chosen, it does not provide for any second appeal. That is plain from the contrast with ss 383 and 383A governing post conviction appeals which do, when read together, explicitly provide for an appeal by the convicted person against his or her conviction either to the Court of Appeal or (with leave) directly to this Court and also provide for a further appeal by the convicted person against any adverse decision of the Court of Appeal, again subject to the leave of this Court. No equivalent provision appears in s 379A.

[3] The Court therefore lacks jurisdiction to grant the present application.

Solicitors:  
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