

IN THE SUPREME COURT OF NEW ZEALAND

**SC 49/2006
[2006] NZSC 66**

BETWEEN SUSAN COUCH
 Appellant

AND THE ATTORNEY-GENERAL
 Respondent

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: B P Henry for Appellant
 J C Pike and F E Guy Kidd for Respondent

Judgment: 1 September 2006

JUDGMENT OF THE COURT

- A. Leave to appeal is granted.**
- B. The approved ground is whether the cause of action based on negligence was correctly struck out.**

REASONS

[1] We are satisfied that the proposed appeal in relation to the cause of action based on misfeasance in public office cannot succeed and have not granted leave in respect of it. The appellant has not pleaded, and would in any event appear to have no prospect of proving, the requisite elements of such a claim, namely that the official concerned acted deliberately or with advertent recklessness as to the consequences for a person in the general position of the appellant.

[2] The grant of leave relating to the negligence cause of action is intended to encompass both the question of the existence of a duty of care and, if it exists, the

question of whether exemplary damages would be available for a claimant alleging breach of such a duty.

Solicitors:
Denis Gates, Whangaparoa for Appellant
Crown Law Office, Wellington for Respondent