

IN THE SUPREME COURT OF NEW ZEALAND

**SC 87/2007
[2007] NZSC 110**

BETWEEN

PHILLIP HANS FIELD
Applicant

AND

MALCOLM JAMES BURGESS
Respondent

Court: Elias CJ, McGrath and Anderson JJ

Counsel: S I Perese for Applicant
J C Pike for Respondent

Judgment: 17 December 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

[1] Mr Field applies for leave to appeal against a judgment of the Court of Appeal which held that it had no jurisdiction to hear an appeal against a decision of the High Court. That Court has given leave to the police to prosecute Mr Field for an alleged offence of bribery and corruption as a Member of Parliament under s 103 of the Crimes Act 1961.

[2] At the heart of the Court of Appeal's reasoning is that the Crimes Act does not provide a right of appeal against a Judge's decision to give leave to prosecute under s 103. The matter is not a civil proceeding and the provisions of s 66 of the Judicature Act giving rights of appeal against decisions in the civil jurisdiction do not apply.

[3] Counsel for Mr Field seeks to argue that a decision to grant leave under s 103 is a civil matter, so that the Court has jurisdiction to hear an appeal. He says that the leave decision is in a separate matter from any subsequent prosecution. It should be classified as civil rather than criminal in nature.

[4] We consider it to be clear beyond argument that although a leave decision is preliminary and in that sense separate, it is so linked to the subsequent criminal process that may be initiated if leave is given, that it becomes part of that process.

[5] We do not accept that this Court's decision in *Mafart v Television New Zealand Ltd*¹ or any other authority supports the contrary proposition. Accordingly it is not in the interests of justice for us to grant leave to appeal and the application must be dismissed.

Solicitors:
Saseve, Manukau for Applicant
Crown Law Office, Wellington

¹ [2006] 3 NZLR 18.