

IN THE SUPREME COURT OF NEW ZEALAND

**SC 36/2009
[2009] NZSC 67**

BETWEEN	IAN RUSSELL GEARY Applicant
AND	THE PSYCHOLOGISTS BOARD AND ANOR Respondents

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: A C Beck for Applicant
S C D A Gollin for First Respondent

Judgment: 24 June 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2,500 to the first respondent.

REASONS

[1] The Court of Appeal dismissed the applicants appeal against the High Court's exercise of discretion refusing him leave to cross-examine certain deponents in his proceeding for judicial review. He now seeks leave for a second appeal to this Court. He wishes to challenge the long-standing rule that leave is necessary to cross-examine a deponent in a judicial review proceeding. We are not persuaded that such a challenge has any prospect of success. The approach which has been taken for many years in New Zealand, namely that cross-examination in judicial review proceedings will be permitted only on rare occasions when required by the interests of justice, is soundly based. Moreover, a similar approach applies in comparable

jurisdictions.¹ Natural justice considerations and similar concerns are adequately met by the Court's responsibility to grant leave where it is in the interests of justice.

[2] In the instant case cross-examination has been sought for the purpose of exploring the possibility of bias on the part of members of the Board but we are satisfied that the Courts below did not err in concluding that the applicant's allegations did not provide a sufficient basis for a departure from the general rule.

Solicitors:

Gault Mitchell, Wellington for Applicant

Minter Ellison Rudd Watts, Wellington for First Respondent

¹ See, for example, Lord Diplock's statement in *O'Reilly v Mackman* [1983] 2 AC 237 at pp 283–283 that “it will only be on rare occasions that the interest of justice will require that leave be given for cross-examination of deponents” and Woolf, Jowell and Le Sueur (eds) *De Smith's Judicial Review* (6th ed, 2007) p 849.