

IN THE SUPREME COURT OF NEW ZEALAND

**SC 55/2010
[2010] NZSC 104**

BETWEEN	AVOWAL ADMINISTRATIVE ATTORNEYS First Applicant
AND	NIKYTAS NICHOLAS PETROULIAS Second Applicant
AND	THE DISTRICT COURT AT NORTH SHORE First Respondent
AND	THE COMMISSIONER OF INLAND REVENUE Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: G D Clews, A A H Low and N A Russ for Applicants
J C Pike and P H Courtney for Second Respondent

Judgment: 16 August 2010

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay the Second Respondent costs of \$3000 plus disbursements to be fixed if necessary by the Registrar.**

REASONS

[1] Officers of the Inland Revenue Department entered premises of the First Applicant, Avowal and other associated persons, pursuant to s 16 of the Tax

Administration Act 1994. Avowal commenced judicial proceedings seeking to prevent the Second Respondent, the Commissioner of Inland Revenue, from accessing information in those premises, including computer hard drives. A substantial part of Avowal's concern and that of the second applicant, Mr Petroulias, was the Commissioner's decision to provide information obtained from Avowal to the Australian Tax Office.

[2] One of the contentions is that the Australia-New Zealand Double Taxation Act cannot be used so as to allow one contracting state to obtain information that it could not obtain under its own legislation. Secrecy issues are raised. Avowal's proceedings failed in both the High Court and the Court of Appeal. It now seeks to bring the matter to this Court on the contention that a number of legal issues of general or public importance arise. The opposition to the application for leave is based in substantial part on the ground that there is no sufficient factual basis in the record for any of the legal arguments which Avowal and Mr Petroulias wish to advance.

[3] Having considered the competing submissions we are satisfied that leave should be declined. We agree with the second respondent's submission that the legal points which are raised do not have a sufficient factual basis. Indeed in some respects they are inconsistent with factual findings made in the High Court and upheld in the Court of Appeal. An example is the "necessary or relevant" issue: see para 18 of second respondent's submissions. Other matters, such as the "books or documents" point relating to hard drives, seem to us to be incapable of serious argument.

[4] In short, we are satisfied that the proposed appeal has insufficient prospect of success to warrant leave being granted. It would not be in the interests of justice to grant leave in these circumstances. For these reasons the application must be declined.

Solicitors:
Crown Law Office, Wellington for Second Respondent