

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 94/2006  
[2007] NZSC 10**

BETWEEN                      JOSKO SESTAN  
   Applicant

AND                              THE DIRECTOR OF AREA MENTAL  
   HEALTH SERVICES WAITEMATA  
   DISTRICT HEALTH BOARD  
   Respondent

Court:                      Blanchard, Tipping and McGrath JJ

Counsel:                      T Ellis for Applicant  
   D A Marshall for Respondent  
   V Sim for Ministry of Justice

Judgment:                      7 March 2007

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**JUDGMENT OF THE COURT (COSTS)**

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**The application is dismissed.**

**REASONS**

[1]     The application for leave to appeal was dismissed because a writ of habeas corpus could not be issued once the applicant had been released from custody. The present application for costs is not against the respondent but against the Ministry of Justice which was not a party to the case. It is presumably made on the basis that the applicant was not eligible for legal aid. The applicant's counsel suggests that the Ministry of Justice was at fault because the hearing did not take place prior to the applicant's release from custody which occurred early in January.

[2]     The reasons why the application made just prior to Christmas could not be heard before the vacation were traversed in a Minute of the Court at that time. As noted, it was counsel himself who indicated a need for preparation time so that the matter could be well argued and to allow for interveners to be heard. As it happened,

because of a recusal by one of the permanent Judges of this Court, an Acting Judge would have been needed and none of the limited number of persons permitted by the Supreme Court Act 2003 to perform that function would have been available at that time. The primary reason, was however, the first.

[3] In these circumstances it is verging on the irresponsible to suggest that the Ministry of Justice has been in any way at fault.

Solicitors:  
Blackstone Chambers, Wellington for Applicant  
M R Heron, Auckland for Respondent  
Crown Law Office, Wellington