

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 19/2018  
[2018] NZSC 34

BETWEEN CHRISTOPHER JOSEPH O'NEILL  
Applicant

AND KIT TOOGOOD, CECIL HARDING  
CROUCHER AND MATT AMON  
Respondents

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person  
S M Earl for Respondents

Judgment: 17 April 2018

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JUDGMENT OF THE COURT

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- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2,500 to the respondents.**
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REASONS

[1] Mr O'Neill wished to appeal to the Court of Appeal against a decision of the High Court.<sup>1</sup> As he did not file the appeal within time, he applied to the Court of Appeal for an extension of time. The Court of Appeal declined this.<sup>2</sup> The Court of Appeal applied the approach to such application set out in this Court's decision in *Almond v Read*.<sup>3</sup> The Court considered that the delay was not great: the application for extension of time was filed on 21 July 2017; the appeal period expired on

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<sup>1</sup> *O'Neill v Toogood* [2017] NZHC 795 (Cull J) [*O'Neill* (HC)].

<sup>2</sup> *O'Neill v Toogood* [2017] NZCA 505 (French, Winkelmann and Brown JJ) [*O'Neill* (CA)].

<sup>3</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

25 May 2017. However, it considered that the proposed appeal was “both legally untenable and an abuse of process”.<sup>4</sup> It therefore declined the extension of time.

[2] The applicant applied to the Court of Appeal for a recall of its judgment, but this was also declined.<sup>5</sup>

[3] The High Court judgment against which the applicant wanted to appeal to the Court of Appeal was a decision of Cull J dealing with an application by the respondents to strike out Mr O’Neill’s “petition to call-back” a judgment of the High Court in a proceeding between Mr O’Neill and the Accident Compensation Corporation (ACC).<sup>6</sup> The defendants (and now the respondents to the present application) were the High Court Judge who heard the ACC proceeding, Toogood J, as well as two Deputy Registrars in the Auckland Registry of the High Court, one of whom had been the court taker at the hearing of the proceeding before Toogood J and the other of whom was a civil appeals case officer. Cull J found that:

- (a) the statement of claim made scandalous and inflammatory claims against the defendants, particularly Toogood J;<sup>7</sup>
- (b) the statement of claim pleaded no cause of action;<sup>8</sup> and
- (c) the proceeding disclosed no tenable or reasonably arguable cause of action and was frivolous, vexatious and an abuse of process.<sup>9</sup>

[4] The application for leave to appeal to this Court specifies the decision of the Court of Appeal refusing to recall its judgment as the judgment against which Mr O’Neill wishes to appeal. There is nothing in the material before the Court that indicates that there was any error by the Court of Appeal in refusing to recall its judgment.

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<sup>4</sup> *O’Neill (CA)*, above n 2, at [11].

<sup>5</sup> *O’Neill v Toogood* [2018] NZCA 13 (French, Winkelmann and Brown JJ).

<sup>6</sup> *O’Neill v Accident Compensation Corporation* [2015] NZHC 2823 (Toogood J).

<sup>7</sup> *O’Neill (HC)*, above n 1, at [32].

<sup>8</sup> At [33].

<sup>9</sup> At [49].

[5] It is apparent from the submissions filed by the applicant that he may have intended to seek leave to appeal against the Court of Appeal decision refusing his application for an extension of time. That decision raises no matter of public importance, the principles to be applied having been recently determined by this Court in *Almond v Read*. The Court of Appeal applied those principles in the present case. Having considered both the Court of Appeal's decision and the decision of Cull J, against which Mr O'Neill wished to appeal to the Court of Appeal, we are also satisfied that no miscarriage of justice arises or will arise if leave to appeal is refused.

[6] The application for leave to appeal is dismissed.

[7] We award costs to the respondents of \$2,500.

Solicitors:  
Meredith Connell, Auckland for Respondents