

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 5/2010  
[2010] NZSC 34**

BETWEEN                      WILLIAM PATRICK JEFFRIES  
   Appellant

AND                              THE PRIVACY COMMISSIONER  
   Respondent

Court:                      Blanchard, McGrath and Wilson JJ

Counsel:                    P D McKenzie QC for Appellant  
   C Gwyn and D Baltakmens for Respondent

Judgment:                31 March 2010

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**JUDGMENT OF THE COURT**

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- A    Leave to appeal is granted.**
- B    The approved ground is whether unsolicited communications received by the applicant while acting as a barrister are capable of attracting litigation privilege.**

**REASONS**

[1]    This is an application for leave to appeal against a judgment of the Court of Appeal<sup>1</sup> which held that the appellant is bound to furnish information to the Privacy Commissioner in accordance with a requirement to do so made under s 91(4) of the Privacy Act 1993. The appellant contends the information is protected by litigation privilege.

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<sup>1</sup>    *Jeffries v Privacy Commissioner* [2009] NZCA 567.

[2] The first proposed ground of appeal in this Court is that the Privacy Commissioner did not have jurisdiction to require the appellant to provide information concerning communications the appellant made when he was acting as a barrister. The point concerns whether the applicant falls outside of the term “any person” in s 91(4) of that Act. The applicant contends he is not an “agency” under the Act when acting as a barrister as he is part of the judicial functions of a court. We are satisfied that the judgment of the Court of Appeal was correct on this point in deciding that the applicant, as a barrister, is a person who is subject to the Commissioner’s jurisdiction in terms of s 91(4). The ground is not arguable and we refuse leave to appeal in respect of it.

[3] Another proposed ground of appeal concerns whether litigation privilege may protect unsolicited communications to a barrister. Under s 94(1A) of the Act, the question of whether information would be properly withheld because it is protected by privilege is decided by the Commissioner, who may require that the information be furnished solely to enable consideration to be given to that matter. In its judgment, the Court of Appeal decided that under s 56 of the Evidence Act 2006 the communications in issue (which had been the subject of evidence received by the Court of Appeal) could not attract litigation privilege because they were unsolicited. This was decided by the Court of Appeal without extensive discussion.

[4] We accept that this question is one of public importance and in the circumstances have decided that leave should be given for the appellant to appeal to this Court on that ground.

[5] The appellant also raises various other points concerning provisions in the Privacy Act, and the Evidence Act as well as s 27 of the New Zealand Bill of Rights Act 1990. He also claims immunity as a barrister. We are satisfied that all remaining proposed grounds of appeal are either subsumed in our refusal of leave on the first proposed ground or are not capable of giving rise to arguable grounds of appeal.

[6] The application for leave to appeal is accordingly allowed, leave being confined to the ground of appeal indicated.

Solicitors:

Duncan Cotterill, Wellington for Appellant

Crown Law Office, Wellington for Respondent