

D. We now make the further order: The respondent is to pay costs to the appellant of \$3000 together with reasonable disbursements including the cost of travel and accommodation, if any, to be fixed by the Registrar in the absence of agreement.

REASONS

(for Court's determination that it has jurisdiction)

[1] This application for leave to appeal relates to a Court of Appeal judgment which is concerned with whether those who complain to the Medical Practitioners Disciplinary Tribunal about the conduct of a medical practitioner can be taken to have consented to disclosure of records of their consultations with other counsellors, psychiatrists and psychologists, so that the protection from disclosure of such records under s 32 of the Evidence Amendment Act (No. 2) 1980 is lost.

[2] The Medical Practitioners Act 1995 provides that those who are dissatisfied with decisions of the Tribunal may appeal to the District Court. Thereafter, there is a right of appeal by way of case stated on a question of law to the High Court and, with leave, to the Court of Appeal under the provisions of Part 4 of the Summary Proceedings Act 1957. Those provisions are applied by s 121(3) of the Medical Practitioners Act "in so far as they are applicable and with all necessary modifications".

[3] Section 144A of the Summary Proceedings Act 1957 goes on to provide that, with the leave of the Supreme Court, either party may appeal to that Court against the Court of Appeal's decision.

[4] The present application for leave to appeal is brought under s 144A by a medical practitioner who faces charges before the Tribunal.

[5] Mr Lange, who appeared for the respondent, which has conduct of the charges, argued that s 144A does not give this Court jurisdiction to hear an appeal against the Court of Appeal's judgment in this case. His argument is in essence that an appeal under the Medical Practitioners Act is brought against a judgment in a civil proceeding, and must accordingly be brought under s 7 of the Supreme Court Act, rather than s 10, which, Mr Lange says is exclusively concerned with criminal proceedings. Section 10 provides that the Court can hear and determine appeals authorised by s 144A but not, according to the argument, if they are civil proceedings. Mr Lange argues that s 7 of the Supreme Court Act is not available, as it confers jurisdiction to hear appeals in civil proceedings only if a right of appeal is not precluded by another statute. Counsel here points to s 67 of the Judicature Act 1908 which was held by the Privy Council to preclude appeals beyond the Court of Appeal in *De Morgan v Director-General of Social Welfare* [1997] 3 NZLR 385, 387-388.

[6] The question has arisen because of the inconsistency between the statutory scheme of the Supreme Court Act 2003, which distinguishes between appeals against decisions in civil proceedings and criminal proceedings (including proceedings under the Summary Proceedings Act) on the one hand, and appeals under statutes such as the Medical Practitioners Act, which incorporate provisions for appeals on questions of law that are applicable in the summary criminal jurisdiction on the other. We are however satisfied that in the context of a statute with a purpose that includes improvement of access to justice and providing generally for the Supreme Court's jurisdiction, s 10 when read together with s 144A, authorises appeals in circumstances such as the present, as if the appeals concerned were brought in criminal proceedings. It follows that the bar in s 67 of the Judicature Act has no application, and that this Court has jurisdiction to hear the appeal, under s 10 of the 2004 Act.

Solicitors:
Fisher Lamberg, Auckland for Appellant
Raymond Donnelly & Co, Christchurch for Respondent