

IN THE MATTER OF	An application by BARRY DEAN SEXTON for a review of the decision of the Registrar declining to accept for filing an application for leave to appeal
BETWEEN	BARRY DEAN SEXTON Applicant
AND	RICE CRAIG First Respondent
AND	RICE CRAIG NOMINEE COMPANY LIMITED Second Respondent

Court: Blanchard, Tipping and Anderson JJ

Judgment: 25 June 2007

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**JUDGMENT OF THE COURT**

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**The Registrar's decision is confirmed.**

**REASONS**

[1] On 23 May 2007 the Court of Appeal dismissed Mr Sexton's application for special leave to appeal from a decision of the High Court. Special leave was required because the time for appealing as of right had expired as a result of an earlier appeal having been deemed abandoned under r 43 of the Court of Appeal (Civil) Rules 2005. The application to the Court of Appeal was made under r 29(4) of those rules.

[2] Mr Sexton attempted to lodge with the Registrar of this Court an application for leave to appeal to this Court against the Court of Appeal's refusal of leave but the Registrar has returned the application to him on the basis that he had no jurisdiction

to accept it because s 7(b) of the Supreme Court Act precluded this Court from hearing the proposed appeal in these circumstances. Mr Sexton has now filed a memorandum seeking to have the Court review the Registrar's decision and directing him to accept the application. We are therefore issuing this judgment pursuant to rr 5 and 7 of the Supreme Court Rules.

[3] Section 7(b) provides that this Court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against any decision made in the proceeding unless the decision is a refusal to give leave or special leave to appeal to the Court of Appeal. Plainly the decision of the Court of Appeal which Mr Sexton seeks to challenge in this Court constitutes a refusal by the Court of Appeal to give special leave to appeal to the Court of Appeal.

[4] The case exactly fits the embargo against appeals to this Court constituted by s 7(b). There is nothing in Mr Sexton's memorandum sufficient to overcome the plain terms of the section. As this Court has previously pointed out in *Erwood v Glasgow Harley*,<sup>1</sup> no logical distinction can be made between cases where leave or special leave is required on a substantive basis and cases where leave or special leave is required for time reasons. The Court of Appeal decision was made by a majority but that has no bearing on this question of jurisdiction.

[5] The Registrar's decision was therefore correct and is confirmed. The application was rightly rejected for want of jurisdiction in this Court to consider it.

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<sup>1</sup> [2007] NZSC 4.