

IN THE SUPREME COURT OF NEW ZEALAND

SC34/2013
[2013] NZSC 55

BETWEEN JOHN COLMAN
 Applicant

AND ATTORNEY-GENERAL
 Respondent

Court: Elias CJ and William Young J

Counsel: Applicant in person

Judgment: 11 June 2013

JUDGMENT OF THE COURT

The applications for recall are dismissed.

REASONS

[1] Mr Colman has applied for a recall of the judgment of this Court delivered on 17 May 2013 dismissing his application for leave to appeal.¹ He has filed two separate applications.

[2] He claims that the judgment did not deal with his claim CIV-2011-088-204 which he says was the only subject matter of his application for leave to appeal. But, as explained in the 17 May judgment, this reference number does not appear to relate to any of the proceedings which he issued.² A subsequent computer search suggests that the proceeding so numbered involves parties other than the applicant and concerns a charging order. In any event, having regard to his description of the subject matter of the claim which he wished us to address, we are left with the view that this was the claim which is discussed at [7] of our 17 May judgment.

¹ *Colman v Attorney-General* [2013] NZSC 52.

² At fn 6.

[3] Mr Colman's argument on his first recall application proceeds on the basis that:

- (a) an attack on a judicial determination made in other proceedings is only objectionable if that determination is a "subsisting ruling of a court"; and
- (b) the rulings which he is attacking are not relevantly "subsisting" because they were given in proceedings which resulted in a discharge without conviction.

In Mr Colman's terms, the discharge without conviction is "the subsisting" ruling and everything that went before, and led to the occasion for, that determination is no longer "subsisting".

[4] As is apparent, the conclusion of the High Court judge that a discharge without conviction was appropriate was premised on a number of rulings which had been made along the way in both the District Court and High Court. Mr Colman's wish to challenge those rulings is for reasons which include a desire to establish that the prosecution should have been resolved in his favour on a basis more favourable to him (as he perceives it) than the discharge without conviction.

[5] The rationale of abuse of process principles is the desirability of restricting re-litigation of issues which have been the subject of determination in other proceedings. This rationale was plainly engaged by the applicant's claim. The principles themselves are open-textured and there is no obvious reason why they should be constrained in the manner suggested by the applicant. His proposed challenge to the conclusion of the High Court did not meet the criteria for granting leave in a case of this particular sort (involving a leap-frog appeal of a High Court judgment in respect of which the Court of Appeal has refused leave).

[6] Mr Colman's second recall application is based on the complaint that his application was dismissed despite the Court rejecting the only ground for opposition which was advanced by the respondent. This complaint too is unsound. Whether

leave to appeal should be granted in any case is for this Court to determine in light of the relevant statutory criteria.

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