IN THE SUPREME COURT OF NEW ZEALAND

SC 80/2015
[2016] NZSC 4

BETWEEN	ALAN IVO GREER Applicant
AND	RAY SMITH First Respondent
	JACK HARRISON Second Respondent

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

Counsel: Mr Siemer in person

Judgment: 10 February 2016

JUDGMENT OF THE COURT

The recall application is dismissed.

REASONS

[1] Mr Siemer seeks a recall of our judgment of 18 December 2015 in which we dismissed his application for the discharge or variation of a decision by O'Regan J to dismiss his application for access to court records.[1] His primary complaint is that he was not given the opportunity to make submissions on the approach which we took in that judgment as to applications for access to court records and in particular, who should determine them, the criteria to be applied and the rights of review, if any, in relation to such decisions.

[2] In the absence of rules governing access to court records, the court is required to determine who should determine applications for access. This is essentially a matter of administration. The decision that such applications should be dealt with by

1 *Greer v Smith* [2015] NZSC 196.

a judge rather than the Registrar was therefore not one on which it was necessary to seek submissions. The decision of O'Regan J was that the determination of such applications should be guided by the rules which apply to access to High Court and Court of Appeal records. It was open to Mr Siemer to make submissions as to the appropriateness of that approach and its application to the case at hand, and indeed he did, albeit mainly as to application.

[3] The awkwardness of applying s 28 of the Supreme Court Act 2003 to decisions not directly provided for by the Act and the Supreme Court Rules 2004 was adverted to in *Howard v Accident Compensation Corporation.*[2] In the present case, this awkwardness arose acutely. Mr Siemer applied under s 28(3) for discharge or variation of O'Regan J's order. This application was premised on the assumptions that the application for leave to appeal by Mr Greer was still "before the Supreme Court" and the decision by O'Regan J was, in relation to that proceeding, "interlocutory". Given that Mr Greer's application had already been dismissed, the doubtful nature of these assumptions was obvious and it was open to Mr Siemer to seek to justify them. He did not do so. In these circumstances, we did not consider it necessary to go back to Mr Siemer on these issues. As well, we see nothing in his present recall submissions to suggest that we were wrong in the conclusion we reached.

[4] The application for recall is dismissed.

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2 *Howard v Accident Compensation Corporation* [2014] NZSC 31, (2014) 21 PRNZ 815.