



application for leave and any appeal that would follow in the event that leave were granted.

[3] *W (CA731/2015) v R* was an appeal by W against his convictions on a number of counts of sexual offending against L, and one count of threatening to cause grievous bodily harm to L. The events founding the charges happened in 2004 and W's trial took place in December 2004. At the time W and L were in institutional care.

[4] In the course of its judgment, the Court of Appeal considered evidence from two witnesses to the effect that L recanted his allegations against W in 2005. The Crown filed an affidavit from L in response to the appeal in which he said he did not remember making any statement in the nature of a recantation to either of the two recantation witnesses. He was not called for cross-examination. The Court found the evidence of the recantation witnesses was reliable.<sup>2</sup>

[5] The Court of Appeal granted W an extension of time to appeal, allowed his appeal and did not order a retrial.

[6] L has commenced civil proceedings against the Attorney-General alleging negligence while he was in care. One aspect of this negligence was that he was placed in a situation where W was able to sexually abuse him in the ways that resulted in the criminal charges of which W was subsequently convicted. The applicant argues the Court of Appeal decision and reasoning will have an adverse impact on the civil proceedings that he has commenced against the Attorney-General.

[7] Although counsel for L filed detailed submissions about the inherent powers of the Court, the inherent jurisdiction of High Court Judges (and the fact that Supreme Court Judges remain High Court Judges), cases where permission was given for complainants or witnesses to be represented in criminal proceedings and the law of other jurisdictions, we see the question of jurisdiction as being a matter of

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<sup>2</sup> At [36]–[37].

interpretation of the relevant statutory provisions conferring jurisdiction on this Court in relation to criminal matters.

[8] This Court has power to hear and determine appeals authorised by Part 6 of the Criminal Procedure Act 2011 or section 10 or 10A of the Court Martial Appeals Act 1953.<sup>3</sup>

[9] Only pt 6 of the Criminal Procedure Act is in issue here. The relevant provision in pt 6 is s 237(1), which deals with appeals against determinations of a first appeal court (as the Court of Appeal was in the case of *W (CA731/2015) v R*). Section 237(1) provides:

A convicted person may, with the leave of the second appeal court, appeal to that court against the determination of the person's first appeal under this subpart.

[10] Section 238(c) makes it clear that this Court is the second appeal court in relation to a determination of a first appeal in the Court of Appeal. Section 239(1) provides that a convicted person commences a second appeal by filing a notice of application for leave to appeal in the second appeal court. It is clear from those provisions that the Court's jurisdiction in relation to criminal proceedings is limited in the case of second appeals to appeals by the convicted person or, in a few cases, the prosecutor or other party to the appeal.<sup>4</sup>

[11] It is clear from these provisions that the Court does not have jurisdiction to entertain an appeal by a complainant against a decision of the Court of Appeal on a first appeal setting aside convictions for offences in respect of which the complainant was the alleged victim.

[12] As the Court does not have jurisdiction to consider the present application, the application is dismissed.

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<sup>3</sup> Senior Courts Act 2016, s 71; Supreme Court Act 2003, s 10.

<sup>4</sup> See for example ss 253(2) and 303 of the Criminal Procedure Act.