

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 101/2019
[2019] NZSC 135**

BETWEEN R (SC 101/2019)
Applicant

AND LEGAL SERVICES COMMISSIONER
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: C G Tuck and T D A Harré for Applicant
L M Hansen for Respondent

Judgment: 6 December 2019

Reissued: 9 December 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] The applicant, applied for legal aid to pursue an individual complaint before the United Nations Human Rights Committee (UNHRC) relating to sexual abuse whilst in state care in Australia. The applicant was deported from Australia to New Zealand on the basis he failed the character requirement under s 501 of the Migration Act 1958 (Cth).

[2] His application for legal aid was declined on the basis the UNHRC is not a “judicial authority”, which is the relevant category of proceedings for which civil legal aid may be granted in terms of s 7(1)(e)(v) of the Legal Services Act 2011. His appeal from the decision of the Legal Aid Tribunal (the Tribunal),¹ confirming the decision of the Legal Services Commissioner declining legal aid, was dismissed in the High Court by Doogue J.² Doogue J said the High Court was bound by the decision of the Privy Council in *Tangiara v Wellington District Legal Services Committee* which held that the UNHCR was not a judicial authority for these purposes.³

[3] The applicant seeks leave to appeal from the decision of the High Court.

The proposed appeal

[4] The applicant wishes to argue on appeal that the legal landscape in New Zealand has changed since the decision in *Tangiara* was delivered and the approach taken in that case needs to be reconsidered so that he can pursue the only remedy remaining to him.⁴ Leave to appeal directly from the High Court is sought on the basis that step is the most efficient course because the Court of Appeal would be bound by the Privy Council decision.⁵

[5] We are not satisfied it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.⁶ Nor are there exceptional circumstances warranting a direct appeal to this Court.⁷

[6] As the respondent’s submissions note, the Court has made it clear that strong grounds are necessary before the Court will overrule a decision of the Privy Council in relation to New Zealand.⁸ The decision in *Tangiara* was on a provision identical in

¹ *RZ (Historic Abuse)* [2019] NZLAT 001 [the Tribunal decision].

² *[R] v Legal Services Commissioner* [2019] NZHC 2117.

³ *Tangiara v Wellington District Legal Services Committee* [2000] 1 NZLR 17 (PC).

⁴ The Tribunal decision, above n 1, at [6]–[7] records that, having been deported, the applicant cannot seek compensation under the Australian scheme for sexual abuse; cannot obtain legal aid in Australia as he is not resident there; and is a beneficiary without means to pay a lawyer in New Zealand.

⁵ *R v Chilton* [2006] 2 NZLR 341 (CA) at [111].

⁶ Senior Courts Act 2016, s 75(a).

⁷ Senior Courts Act, s 75(b).

⁸ *Couch v Attorney-General (No 2)* [2010] NZSC 27, [2010] 3 NZLR 149 at [32] per Elias CJ, [51] per Blanchard J, [104]–[106] per Tipping J, [210] per McGrath J and [251] per Wilson J.

relevant respects to that now in issue and also dealing with an attempt to pursue an application to the UNHRC. Further, the relevant part of the provision has been re-enacted unchanged on two occasions since it was considered by the Privy Council.⁹ In the circumstances, the proposed appeal has insufficient prospects of success to meet the criteria for leave to appeal.

Result

[7] The application for leave to appeal is dismissed. In the circumstances, we make no order as to costs.

Solicitors:
Toner Law, Tauranga for Applicant
Ministry of Justice, Wellington for Respondent

⁹ Legal Services Act 2000, s 7(1)(e)(v) and Legal Services Act 2011, s 7(1)(e)(v). The fact the present case does not relate to actions in New Zealand suggests there is accordingly less reason for the Act to be interpreted to cover this case.