

**NOTE: HIGH COURT ORDER SUPPRESSING THE NAME AND
IDENTIFYING PARTICULARS OF THE APPELLANT AND OTHER
PLAINTIFFS REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 82/2020
[2021] NZSC 15**

BETWEEN

M (SC 82/2020)
Appellant

AND

ATTORNEY-GENERAL (IN RESPECT OF
THE MINISTRY OF HEALTH)
First Respondent

WAITEMATĀ DISTRICT HEALTH
BOARD
Second Respondent

CAPITAL AND COAST DISTRICT
HEALTH BOARD
Third Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: A J Ellis for Appellant
M J McKillop and J B Watson for First Respondent
D R La Hood for Second and Third Respondents

Judgment: 3 March 2021

JUDGMENT OF THE COURT

**The application for reconsideration of the approved question on
which leave was given in this Court's judgment of 16 December
2020 (*M (SC 82/2020) v Attorney-General* [2020] NZSC 145) is
dismissed.**

REASONS

[1] In a judgment dated 16 December 2020, this Court gave the appellant leave to appeal in part.¹ The approved question was:

Was the applicant detained unlawfully after 20 December 2008 because the direction of the Attorney-General under s 31(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 that he be detained as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 was not issued until 14 January 2009, and, if so, for how long?

[2] In all other respects the application for leave to appeal was dismissed.

[3] The appellant has filed a memorandum seeking reconsideration of the grounds of appeal. He takes issue with this Court's treatment of one proposed ground of appeal. In relation to that ground this Court said:²

In relation to the discrimination ground, we accept that the question of whether the procedure for mentally disabled defendants in the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP (MIP) Act) is inconsistent with ss 19 and 25(c) of the New Zealand Bill of Rights Act is a matter of general and public importance. But the applicant did not seek a declaration of inconsistency in this regard in his pleadings, which would mean the Court would be addressing the issue in the absence of a detailed consideration of it in the Courts below. That, and the fact that the applicant was detained under the now repealed Criminal Justice Act 1985, rather than the CP (MIP) Act, means this is not an appropriate case to address the issue.

[4] The appellant points out that he did in fact seek a declaration of inconsistency, but accepts that as the Courts below did not find for the appellant on any point, there was no inconsistency for those Courts to address. Thus, the concern expressed in the leave judgment that this Court would need to address the issue in the absence of a detailed consideration of the Courts below remains correct. So does the second reason for declining leave, namely that the appellant was detained under the Criminal Justice Act 1985 rather than under the Criminal Procedure (Mentally Impaired Persons) Act 2003.

[5] The appellant argues that the discrimination question has now been the subject of detailed consideration in another case, which is likely to be the subject of an appeal

¹ *M (SC 82/2020) v Attorney-General* [2020] NZSC 145.

² At [9].

to the Court of Appeal.³ He argues that the consideration of this question in that case would be helpful to this Court in the present case if it were to now expand the grant of leave to include the discrimination issue.

[6] The respondents oppose the grant of leave on the discrimination ground. They point out that, in the present case, there was no substantive argument in the High Court on the issue of the discriminatory nature of the Criminal Procedure (Mentally Impaired Persons) Act and therefore no consideration of this in the Courts below.

[7] We are satisfied the reasons for declining leave in relation to the discrimination issue remain valid. We therefore confirm the decision not to grant leave on this point.

[8] The application for reconsideration of the grounds of appeal is dismissed.

Solicitors:

Crown Law Office, Wellington for First Respondent

Luke Cunningham & Clere, Wellington for Second and Third Respondents

³ *J (compulsory care recipient, by his welfare guardian, T) v The Attorney-General* [2018] NZHC 1209.