

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 107/2020
[2021] NZSC 16

BETWEEN	PETER GERARD STOCKMAN Applicant
AND	HEALTH AND DISABILITY COMMISSIONER First Respondent
	ANTHONY HILL Second Respondent
	MEENAL DUGGAL Third Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
M S Smith for Respondents
K M Burkhart for Robyn Galvin as Interested Party

Judgment: 3 March 2021

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the first respondent costs of \$2,500.**
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REASONS

[1] The applicant, Mr Stockman, commenced proceedings in the High Court challenging decisions made by the first respondent, the Health and Disability Commissioner (the Commissioner), in relation to complaints Mr Stockman had made about counselling services provided by the Interested Party, Ms Galvin. He sought judicial review of a number of decisions and actions taken in the Office of the

Commissioner in relation to his complaints and, in particular, the decision to take no further action in relation to his substantive complaint. He complained that the Office of the Commissioner discriminated against him because he is a man. He alleged both breach of statutory duty and breach of the New Zealand Bill of Rights Act 1990. He also sought damages from the Commissioner and both the second respondent, Mr Hill, a former commissioner, and third respondent, Ms Duggal, a former deputy commissioner, for misfeasance in public office.

[2] There were a number of interlocutory matters which came before the High Court for resolution. In particular, Mr Stockman sought standard and particular discovery and applied for the suppression of the name of a third party associated with the events leading to the complaint. Both Mr Hill and Ms Duggal applied for an order striking them out as parties to the proceeding or to have the claims against them for misfeasance struck out.

[3] The High Court Judge declined the applications for discovery, declined the application for name suppression and granted the strike-out applications by Mr Hill and Ms Duggal.¹

[4] Mr Stockman appealed as of right against the strike-out decisions and was granted leave by the High Court to appeal against the other aspects of the High Court decision.²

[5] In a judgment dealing with all of Mr Stockman's challenges to the High Court decision, the Court of Appeal:³

- (a) rejected Mr Stockman's claim that the High Court Judge was biased against him because he was an unrepresented litigant and therefore failed to give him a fair hearing;
- (b) upheld the High Court decision refusing standard discovery;

¹ *Stockman v The Health and Disability Commissioner* [2019] NZHC 1098 (Brewer J).

² *Stockman v The Health and Disability Commissioner* [2019] NZHC 175 (Brewer J).

³ *Stockman v The Health and Disability Commissioner* [2020] NZCA 588 (Courtney, Wylie and Muir JJ).

- (c) upheld the High Court decision refusing discovery of confidential reports;
- (d) upheld the Commissioner's claim to privilege in relation to certain documents; and
- (e) upheld the striking out of the actions for misfeasance in public office against Mr Hill and Ms Duggal.

[6] Although the Court of Appeal did not allow Mr Stockman's appeal in relation to name suppression, it made an order remitting the matter to the High Court so the Judge could recall and reissue the judgment with the name of the third party anonymised. This resolved that aspect of Mr Stockman's appeal to his satisfaction. He seeks leave to appeal to this Court against all other aspects of the Court of Appeal's decision.

[7] The issues that Mr Stockman wishes to pursue on appeal can be divided into three broad categories:

- (a) Procedural unfairness/bias in the High Court;
- (b) Discovery issues; and
- (c) Misfeasance in public office: strike-out.

[8] Mr Stockman has a sense of grievance as to how he was treated by the Commissioner's office and by the High Court. As noted earlier, he claims the Commissioner discriminated against him because he is a man and the High Court Judge was biased against him because he is a litigant in person.⁴ He further claims that the Judge infringed his natural justice rights by denying him the opportunity to make submissions on certain matters. The Court of Appeal analysed the allegations of bias in the High Court and determined that they were not made out. It saw some validity in his complaint about being unable to make submissions on certain matters

⁴ In his written submissions, he also suggests the Court of Appeal was biased against him.

but considered this could be remedied by fresh consideration of those matters on appeal.

[9] Mr Stockman wishes to contest these findings in this Court. However, there is nothing in the points he wishes to raise that would justify a further appeal to this Court. The issues are fact-specific and raise no point of public importance, and there is no appearance of a miscarriage of justice.⁵ The substantive issues Mr Stockman raised in relation to discovery and misfeasance were carefully considered again by the Court of Appeal so, even if there had been any basis for the allegation of bias in the High Court, the Court of Appeal's consideration of the issues afresh would have cured it.

[10] In relation to discovery, the points Mr Stockman wishes to raise are interlocutory points which mean that the Court must not give leave to appeal unless it is satisfied not only that the standard appeal criteria in s 74(2) of the Senior Courts Act 2016 are met, but also that it is necessary in the interests of justice for the Court to hear and determine the appeal before the proceeding concerned is concluded.⁶ We are not so satisfied. Again, the issues Mr Stockman wishes to pursue are specific to the factual situation and do not raise matters of general importance requiring resolution by this Court. Nor do we consider there is any risk of a miscarriage of justice if leave is not granted. In particular, we see no basis for Mr Stockman's allegation that the Court of Appeal was biased against him.

[11] In relation to the misfeasance issue, the Court of Appeal applied an orthodox analysis and we see insufficient prospect of success in the arguments the applicant wishes to pursue to justify the cost and delay of a further appeal.

[12] None of the points of appeal that the applicant wishes to pursue meet the criteria for leave to appeal. We therefore dismiss the application for leave and award costs of \$2,500 to the first respondent.

Solicitors:

J I King, Office of the Health & Disability Commissioner, Wellington for Respondents
Kennedys, Auckland for Interested Party

⁵ Senior Courts Act 2016, s 74(2)(a) and (b).

⁶ Section 74(4).