

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 56/2023
[2023] NZSC 105

BETWEEN CHRISTOPHER JOSEPH O'NEILL
Applicant

AND JUDICIARY OF AUCKLAND HIGH
COURT, REGISTRY OF AUCKLAND
HIGH COURT AND PERSONS AS YET
UNKNOWN
Respondents

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
No appearance for Respondents

Judgment: 10 August 2023

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

[1] The applicant filed an application in the High Court styled as “an application to the head-of-bench, and formal complaint to same”. The Registrar of the High Court referred this application to a High Court Judge under r 5.35A of the High Court Rules 2016 for consideration under r 5.35B. Rule 5.35B empowers a judge to strike out or make other directions in relation to a proceeding if satisfied the proceeding is “plainly an abuse” of the High Court’s process. The High Court Judge then issued a judgment striking out the applicant’s proceeding.¹

¹ *O’Neill v The Judiciary of Auckland High Court* [2022] NZHC 2359 (Gwyn J).

[2] The applicant appealed against the High Court decision to the Court of Appeal. The appeal was set down for hearing and, after the applicant did not appear, was set down for hearing again two days later. The applicant also failed to appear on the second occasion. The Court then decided to deal with the appeal on the papers and dismissed the appeal, giving its reasons a month or so later.² The Court of Appeal upheld the decision of the High Court to strike out the applicant's proceeding. The way the Court of Appeal dealt with the appeal in that Court mirrored the way it dealt with another appeal by the applicant to that Court, *O'Neill v Judicial Conduct Commissioner*.³

[3] The applicant now applies for leave to appeal to this Court against the decision of the Court of Appeal.

[4] This Court must not give leave to appeal unless satisfied that it is necessary in the interests of justice to do so.⁴ Section 74(2) of the Senior Courts Act 2016 sets out the criteria for determining whether it is in the interests of justice to grant leave.

[5] The applicant makes the same points about the Court of Appeal's process as he did in his appeal against *O'Neill v Judicial Conduct Commissioner*. We addressed those points in our judgment dealing with the applicant's application for leave to appeal to this Court against that decision.⁵ We apply the same analysis to the present application, but do not repeat it in the present judgment.

[6] In his submission to this Court, the applicant says his application to the High Court was not intended to be a case. He said the application he filed in the High Court should have been referred to the Head of Bench of the High Court. If that is the case, there would be no point in giving leave to appeal to this Court in relation to a case the applicant does not wish to pursue as a court proceeding.

[7] In any event, there is no basis to contest the findings of the Courts below that the application to the High Court did not set out a legal cause of action, did not

² *O'Neill v Judiciary of Auckland High Court* [2023] NZCA 153 (Courtney, Lang and Downs JJ).

³ *O'Neill v Judicial Conduct Commissioner* [2023] NZCA 152.

⁴ Senior Courts Act 2016, s 74(1).

⁵ *O'Neill v Judicial Conduct Commissioner* [2023] NZSC 88.

adequately identify the proposed defendants and, to the extent it related to particular judges, was confronted with the absolute immunity from suit that judges have.

[8] If the applicant wishes to make a complaint about the conduct of any judge or judges that is within the jurisdiction of the Judicial Conduct Commissioner, he should direct his complaint to the Commissioner, not the courts.

[9] The application for leave to appeal is dismissed.

[10] The respondents were not required to file submissions and, in those circumstances, there is no order as to costs.