

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 35/2025
[2025] NZSC 72

BETWEEN	PETER MALCOLM FULLER Applicant
AND	SONNY PATEL Respondent
Court:	Ellen France, Williams and Miller JJ
Counsel:	Applicant in person No appearance for Respondent
Judgment:	2 July 2025

JUDGMENT OF THE COURT

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

[1] Mr Fuller objects to the activities of the New Zealand Police Eagle helicopter flying over his residential properties in Auckland, contending that it amounts to repeated aerial surveillance. He maintains that a campaign via police harassment of helicopter surveillance began immediately after he successfully had a conviction and sentence of community work set aside in the District Court at Waitākere. He says that the helicopter’s surveillance since then is linked to his litigation activity.

[2] Mr Fuller brought a claim in the High Court. He named as defendant Mr Patel, who is the Waitākere Area Controller for the Police Eagle helicopter. In particular, he

wants orders prohibiting New Zealand Police | Ngā Pirihimana o Aotearoa from flying over his residences at any altitude, and compensation.

[3] The claim was struck out under r 5.35B of the High Court Rules 2016 on the ground that it was plainly an abuse of process.¹

[4] Mr Fuller appealed to the Court of Appeal, which held a hearing at which he appeared. Mr Patel has taken no steps and did not appear.

[5] The Court of Appeal examined Mr Fuller's pleading in trespass, under the Privacy Act 2020, Civil Aviation Act 1990, New Zealand Bill of Rights Act 1990 and Health and Safety at Work Act 2015, and tort.² It found all of the claims untenable. It concluded that the proceeding was unsalvageable. It dismissed the appeal accordingly.

[6] Mr Fuller has sought leave to appeal, contending that the Court of Appeal failed to properly assess his claims and failed to consider fresh evidence. He has elaborated on his arguments in an application for leave to amend his appeal (by introducing further evidence) and in a memorandum filed in response to a memorandum from counsel for the Attorney-General, who has indicated that she does not intend to participate unless the Court wishes it. She notes that she, not Mr Patel, is the correct defendant, if this claim is to proceed.³

[7] The proposed appeal does not meet the criteria for leave for the reasons given by the Court of Appeal; the causes of action do not exist, or are inapplicable, or are plainly untenable.⁴ It has insufficient prospect of success in law to justify leave.⁵

[8] The application for leave to amend the leave application is granted, but the application for leave to appeal is dismissed. As the respondent has played no part, there is no order as to costs.

¹ *Fuller v Patel* [2024] NZHC 1866 (Moore J).

² *Fuller v Patel* [2025] NZCA 72 (Katz, Grice and Powell JJ) [CA judgment].

³ Crown Proceedings Act 1950, s 14(2).

⁴ CA judgment, above n 2, at [13]–[19].

⁵ Senior Courts Act 2016, s 74(1).