

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC CIV 25/2004  
[2005] NZSC 4**

**BETWEEN**                      **W J CLARK**  
Applicant

**AND**                              **THE ATTORNEY-GENERAL**  
Respondent

Court:                      Gault J and Tipping J

Counsel:                  T Ellis and A Shaw for Applicant  
V C Sim for Respondent

Judgment:                17 February 2005

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1]     This application for leave to appeal is made in a proceeding which, according to the draft first amended statement of claim dated 5 October 2004, seeks various remedies in respect of alleged failures to carry out investigations into complaints of serious assault upon the plaintiff by prison officers.

[2]     It is to be emphasised that the claims do not seek remedies in respect of the alleged assaults but only in respect of the alleged failures to institute and carry out investigations into the complaints.

[3]     One of the remedies sought is an order suppressing permanently the name and identity of the plaintiff and the detailed nature of the complaint. This was the subject of an application of an interlocutory nature to the High Court and was dealt with in advance of trial on the issues pleaded, even though the order sought would

go beyond interim suppression. In the event, MacKenzie J refused the application and his decision was upheld by the Court of Appeal in a judgment delivered on 2 December 2004. The application to this Court seeks leave to appeal further in respect of that decision.

[4] The Court of Appeal judgment was delivered in open court but by a court constituted differently from that which heard and decided the appeal. Counsel challenged the validity of a judgment so delivered but their challenge was rejected by the Court of Appeal in a further judgment delivered on 9 December 2004. The present application seeks leave also to carry that challenge into this Court.

[5] Having considered the written submissions of counsel in support of the application and those of Crown Counsel in opposition, we are satisfied that the application can be dealt with without an oral hearing and that leave must be refused.

[6] Any order on an application for suppression necessarily involves the exercise of discretion. Only rarely will a second appeal be entertained to review such a discretionary decision. In this case counsel seeks to attack the legal basis on which the discretion was exercised so as to raise a point of important legal principle justifying leave for a second appeal. They have argued that because the alleged assault can be categorised as torture, a special rule should be recognised relating to publication of names and details. There are three difficulties with that. The first is that counsel has not contended (at least in the Court of Appeal) that there should be an absolute rule of prohibition on publication, so that a discretion still would arise in particular cases. But no circumstances of the proposed appellant indicating any particular need for suppression have been disclosed; counsel choosing to argue “in principle”. The second is that counsels’ contentions, advanced without authority, have been carefully reviewed and rejected in the lower courts upon reasoning not said to be unprincipled. The third difficulty is that no case is made out for the need for suppression orders in the context of a proceeding directed not to the substance of the allegations but to the process by which complaints were handled.

[7] Section 13(1)-(3) of the Supreme Court Act 2003 set out the criteria for the grant of leave to appeal. They are supplemented by the further requirement in

subs (4) in the case of interlocutory matters. The governing requirement is that it must be necessary in the interests of justice for this Court to hear and determine the appeal. That cannot be met where a proposed appeal clearly has no prospects of success. That is the case with this proposed appeal. The same applies to the complaint that the judgment of the Court of Appeal was not properly delivered. Section 58 of the Judicature Act 1908 plainly covers the situation and the submissions on the present application have advanced no tenable reasons why it does not. Complaints directed to the involvement of particular judges of the Court of Appeal are equally without merit.

[8] Leave to appeal is refused.

[9] While the Court notes that Mr Clark was legally aided in the lower courts, any submissions on costs on this application may be made by memorandum.

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