

IN THE SUPREME COURT OF NEW ZEALAND

SC 21/2017
[2017] NZSC 96

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND JUDICIAL CONDUCT
COMMISSIONER
First Respondent

JUSTICES ELIAS, YOUNG,
GLAZEBROOK, ARNOLD AND
O'REGAN
Second Respondents

Court: Elias CJ, William Young and Ellen France JJ

Counsel: Applicant in person
C P A Cross for First Respondent
H M Carrad for Second Respondents

Judgment: 23 June 2017

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] The applicant seeks an order recalling our judgment of 16 May 2017 declining his application for leave to appeal against a decision of a single Judge in the Court of Appeal in relation to security for costs.¹ In support of this application, he has raised what we see as two issues:²

- (a) two members of the leave panel are respondents to the application for leave to appeal; and

¹ *Rabson v Judicial Conduct Commissioner* [2017] NZSC 74.

² We regard all points raised by the applicant, most recently in an affidavit of 22 June 2017, as encompassed by the two issues we have identified.

(b) the leave judgment referred to the underlying High Court decision under challenge in the Court of Appeal as being “a minute of Williams J striking out the second respondents as parties to proceedings”³ by way of review of a decision of the Judicial Conduct Commissioner but did not identify that his primary complaint in respect of that decision was the order for costs which was made.

[2] The Court has taken the view that leave applications are required to be dealt with by permanent judges of the Court.⁴ Four of the five permanent judges of the Court are second respondents to the appeal. The doctrine of necessity thus applied. The Court was well aware that the aspect of the minute which the applicant wished to challenge was the order for costs. But, for the purposes of the leave decision, what was primarily important was the decision of the Court of Appeal judge.

[3] The recall application is therefore dismissed.

Solicitors:
Meredith Connell, Wellington for First Respondent
Crown Law Office, Wellington for Second Respondents

³ At [1].

⁴ See s 27 of the Supreme Court Act 2003 and s 81 of the Senior Courts Act 2016 along with s 23 of the 2003 Act and ss 110 and 111 of the 2016 Act.