

IN THE SUPREME COURT OF NEW ZEALAND

SC 44/2016
[2016] NZSC 75

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND THE ATTORNEY-GENERAL
 Respondent

Court: Elias CJ, Glazebrook and O'Regan JJ

Counsel: A J Ellis for Applicant
 A M Powell for Respondent

Judgment: 21 June 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B Costs of \$2,500 are payable to the respondent.**
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REASONS

Introduction

[1] The High Court made orders under s 88B of the Judicature Act 1908, including one which prevented Mr Siemer from instituting further proceedings in the High Court or any inferior court against certain named persons without the leave of the High Court.¹

[2] The Court of Appeal dismissed Mr Siemer's appeal against the High Court decision but allowed the cross-appeal of the Attorney-General. As a result, the High Court order was quashed and replaced with an order that Mr Siemer obtain the

¹ *Attorney-General v Siemer* [2014] NZHC 859 (Ronald Young and Brown JJ) [HC judgment].

leave of the High Court before commencing or continuing any proceeding in the High Court or any inferior court.²

[3] Mr Siemer seeks leave to appeal against the Court of Appeal decision.

Our assessment

[4] The first two proposed grounds of appeal relate to whether the Court of Appeal should have expanded the order to cover all proceedings and whether there should have been a time limit on the order. These questions depend on factual considerations related to the particular circumstances. They therefore raise no issue of public or general importance. Further, with regard to time limits, as the Court of Appeal pointed out, Mr Siemer can at any time make an application to the High Court to revoke or vary the order if there has been a change of circumstances that would warrant this.³

[5] Mr Siemer next wishes to challenge the Court of Appeal decision in *Brogden v Attorney-General*⁴ (affirmed in this appeal by the Court of Appeal).⁵ Mr Siemer submits instead that s 88B is restricted to proceedings that were vexatious when they were commenced and that the assessment should not take into account the manner in which proceedings have been conducted.

[6] Even if Mr Siemer is correct in his interpretation it would not have changed the result. The High Court found that of the 19 proceedings relied on by the Attorney-General, 15 were instituted vexatiously.⁶

[7] The next ground of appeal is that s 88B orders cannot prohibit filing judicial review applications without leave. There is no prospect of this ground of appeal succeeding as it would require the use of the definition of civil proceedings in the Crown Proceedings Act 1950, rather than the definition in the Judicature Act itself.⁷

² *Siemer v Attorney-General* [2016] NZCA 43 (Wild, French and Kós JJ) [CA judgment].

³ At [22].

⁴ *Brogden v Attorney-General* [2001] NZAR 809 (CA).

⁵ CA judgment, above n 2, at [34].

⁶ HC judgment, above n 1, at [197], referring to its conclusions at [101], [121], [126], [133], [137], [140], [146], [153], [156], [159], [165], [169], [176], [187] and [192].

⁷ See the CA judgment, above n 2, at [19].

[8] The next argument is that Mr Siemer has to exhaust his domestic remedies before he can make a communication under the United Nations Human Rights Committee under the first optional protocol to the International Covenant on Civil and Political Rights and that this order stops him doing this. Even assuming this is a relevant factor, the requirement to exhaust domestic remedies relates to legitimate remedies and not to vexatious proceedings as the Court of Appeal noted.⁸ This ground of appeal has no possibility of succeeding.

[9] The last issues Mr Siemer seeks to raise relate to bias or appearance of bias and the effect of a warning given to counsel in relation to recusal applications in the Court of Appeal. The law is settled in this area and the application of the law in Mr Siemer's particular circumstances cannot amount to a matter of general or public importance. In any event the allegations are unsustainable.

Result and costs

[10] The application for leave to appeal is dismissed. Costs of \$2,500 are payable to the respondent.

Solicitors:
Cooper Legal, Wellington for Applicant
Crown Law Office, Wellington for Respondent

⁸ Mr Siemer argues that a domestic court cannot interpret the meaning of exhausting domestic remedies. We agree that this would be a matter to be decided by the Human Rights Committee in a particular case but the Court of Appeal relied on express statements of that Committee in coming to its conclusion: CA judgment, above n 2, at [23]–[24].