



Supreme Court of New Zealand

12 August 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

JEFFRIES V THE PRIVACY COMMISSIONER (SC5/2010) [2010] NZSC 99

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The Privacy Commissioner, acting under powers contained in the Privacy Act 1993, required Mr Jeffries to provide her with information about how he came to be in possession of personal information about two complainants who had asked her to investigate possible breaches of the Act. The personal information had been received by Mr Jeffries while he was acting as a barrister representing a party to legal proceedings against the complainants. Mr Jeffries refused to disclose the circumstances in which he had obtained the information and brought judicial review proceedings in the High Court challenging the validity of the notice given to him by the Privacy Commissioner. He was unsuccessful in the High Court and, on appeal, in the Court of Appeal in the argument that the Privacy Commissioner's notice to disclose was invalid. Leave to appeal further on the grounds of invalidity was declined by the Supreme Court.

The Supreme Court however granted leave to Mr Jeffries to appeal in relation to his claim that the disclosure sought was covered by litigation privilege. That was a claim first made in the Court of Appeal. Mr Jeffries said that he had obtained the personal information about the complainants on an unsolicited basis from an informant. He argued that since the information was received by him for the purpose of conducting litigation in which he was engaged as a barrister, it was protected from disclosure by litigation privilege under s 94 of the Privacy Act. The claim of privilege was rejected by the Court of Appeal on the basis that unsolicited communications are not within the scope of litigation privilege because not received for the purpose of conducting litigation.

The Supreme Court has differed from the Court of Appeal in holding unanimously that litigation privilege is capable of applying to unsolicited communications and information. It has also taken the view that the privilege is capable of extending to the identity of the informant who provides privileged information. Whether a communication or information is properly the subject of litigation privilege requires contextual assessment in application of s 56 of the Evidence Act 2006.

The scheme of the Privacy Act 1993 makes it clear that it is for the Privacy Commissioner to determine any claim of privilege after receiving the information required. Consideration of the claim of privilege by the Court of Appeal was premature because the claim had not been made to or determined by the Privacy Commissioner.

The appeal has accordingly been dismissed, leaving any claim of privilege to be made to the Privacy Commissioner.

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