IN THE SUPREME COURT OF NEW ZEALAND SC 48 /2008

[2008] NZSC 54

Between **Vince Siemer**
Appellant

And **Solicitor General of New Zealand**
Respondent

APPLICATION FOR RECALL of SUPREME COURT JUDGMENT dated 17 May 2010 and RECALL of "MINUTE" dated 11 June 2010

Application dated: 14 June 2010

Submitted by:
Vince Siemer
27 Clansman Terrace, Gulf Harbour (fax) 09 428 2521

To the Registrar of the Supreme Court:

VINCE SIEMER, the appellant in the proceeding identified above, gives notice that I hereby apply for recall of the decision of the Supreme Court SC48/2010 [2010] NZSC 54, dated 17 May 2010 AND "Minute" dated 11 June 2010.

THE SPECIFIC GROUND upon which the appellant seeks recall of the judgment is that it is necessary in the interests of justice and extreme public importance due to[1]:

1. *The Supreme Court decision is legally unsafe.*

THE SPECIFIC GROUND upon which the appellant seeks recall of the "Minute" is that it is necessary in the interests of justice and extreme public importance due to[2]:

2. *The Supreme Court "Minute" which purports to dismiss a valid recall application does not constitute a proper "decision" in accordance with New Zealand law, and specifically s4 of the Supreme Court Act.*

OUTLINE IN SUPPORT OF GROUNDS:

3. By judgment dated 17 May 2010, the Honourable New Zealand Supreme Court quashed lower court rulings against the appellant.

4. In its place, the Supreme Court issued a NEW judgment sentencing the applicant to prison for three months for alleged breach of a gag injunction.

5. The sole support relied upon by the Supreme Court for this new committal order was the unsworn submission of Crown Counsel which alleged the appellant's news publications were in breach of the gag injunction.

6. The Supreme Court's exclusive reliance upon this non-evidence came despite *evidence* having been placed before the Court. All of this evidence confirmed that the appellant's legal news websites were in compliance with the 5 year old gag injunction (which the appellant coincidentally was prevented by the court to defend against).

[1] Provided by Section 13 of the Supreme Court Act 2003
[2] Provided by Section 13 of the Supreme Court Act 2003

7. More importantly, the evidence before the Supreme Court showed that – despite Crown Counsel's unsworn submissions to the contrary – both *Crown Law* and the *New Zealand Domain Name Commissioner* had confirmed these websites were in compliance and that no new breaches had been alleged since these confirmations by Crown Law and the New Zealand Domain Name Commissioner in September 2007.

8. The Supreme Court made no mention of this evidence in its new committal judgment.

9. Beyond the obvious significance of this omission by the Supreme Court, the factual question as to whether the appellant's publications were in breach of a gag injunction was a valid and accepted ground[3] of his Application for Leave to the Supreme Court against the Court of Appeal judgment.

10. It was therefore incumbent upon the Supreme Court to address this evidence before issuing a new committal judgment. It failed to do so.

11. Any decision is unsafe, and the subject Supreme Court decision logically impeached, when the bench relies upon unrepresentative quotes from unsworn Crown submissions to issue a *new* guilty judgment.

12. By way of a Recall Application filed through Counsel on 4 June 2010, the appellant provided *new* evidence which irrefutably showed that the non-evidence which the Supreme Court had exclusively relied upon to sentence the appellant to prison in SC48/2009 [2010] NZSC 54 had been materially altered and misrepresented to the Court by Crown Counsel.

13. A further ground for recall was that appeal of sentence was not a ground of the appeal before the Supreme Court, nor was it cross-appealed. No submissions were made in respect to what sentence was legally appropriate. Yet the Supreme Court issued a new judgment in which it imposed the maximum sentence against the appellant. Natural justice and New Zealand law minimally required the appellant's counsel to be heard on this issue before the Court issued an order imposing a maximum prison sentence. Further, there was no analysis in the Supreme Court sentence as to how or why a maximum sentence was arrived at.

[3] Minute of the Supreme Court dated 7 August 2009 granting the leave application in SC48/2009

14. By "Minute" dated 11 June 2010, the Supreme Court dismissed that recall application on the ground it ***"raises no matter which has not previously been considered in relation to the appeal".***

15. This is an extraordinary, and self-evidently untenable, conclusion. It is impossible, as one example, for the Supreme Court to have "considered" that the sole support it relied upon in its 17 May 2010 judgment sentencing the appellant to prison had been materially altered and misrepresented to the Court. This is because the issue was never raised.

16. The reason Crown Counsel's material misrepresentation was never raised was two-fold:

16.1 All the *evidence* before the Supreme Court supported the appellant's acquittal.

16.2 It seemed unfathomable at the time that five judges on the highest court in any law-respecting country would, or could, rely exclusively upon unsworn submissions of the prosecutor to order a man sent to prison – particularly to the exclusion of all the evidence.

17. It is now virtually certain that the appellant will be immediately committed to prison upon his return to New Zealand on 29 June 2010, and that Sian Elias CJ – a judge with a known and serious conflict of interest – is directly responsible for this action.

18. At all relevant times, Sian Elias CJ was a defendant in a Bill of Rights Claim brought against her by the appellant. This lawsuit had been a ground of a formal application and hearing to disqualify Elias CJ from presiding. In refusing to disqualify Elias CJ, the Supreme Court failed to address this conflict ground[4] and, when challenged with a formal recall, dismissed that recall application by falsely asserting this ground had never been raised by counsel.[5]

[4] Recusal Judgment SC 48/2009 [2010] NZSC 12, dated 1 March 2010
[5] Para [3] of "Minute" of the Supreme Court dated 18 March 2010 SC48/2009

19. The day before the Sian Elias CJ-led Supreme Court dismissed the appellant's recall application by way of "Minute" on 11 June 2010, Associate Judge Bell of the High Court held a case management conference[6] where he issued directions for the appellant to file and serve documents relating to his claim against Elias CJ upon his return to New Zealand.

20. Sian Elias CJ's order sentencing the appellant to prison – and then refusing to forthrightly address the cogent legal issues detailed in the recall application – will conveniently prevent the appellant from pursuing his claim against her.

21. Under s15(2)b of the Supreme Court Act 2004, Sian Elias CJ's imprisonment order of 17 May 2010, once imposed, could also be an obstacle used to deny the appellant court access and natural justice in challenging the flagrant legal flaws in the imprisonment order itself.

22. This recall application is being copied to the New Zealand Attorney General and President of the New Zealand Law Commission because of the questionable mode by which the Supreme Court dismissed the previous recall application.

23. The Attorney General will be formally requested as part of this recall application and hearing to make submissions as intervener in the public interest in respect to the Supreme Court's use of "Minutes" to dismiss applications.

24. Clearly, the Supreme Court's "Minute" of 11 June 2010 which purported to dismiss the recall application had the effect of a judgment. So why was it not a judgment?

25. By issuing a "Minute", the Supreme Court has, on a practical basis, been able to sidestep New Zealand Law which requires it to make decisions openly.

26. The practice of issuing Minutes as engaged in by the New Zealand Supreme Court is minimally unseemly. This recall application seeks the Supreme Court define whether a "Minute" as used to dismiss a valid recall application with significant bonafides has the legal status of a court decision – if any legal status at all in this context. Reconciling this practice with New Zealand law seems a necessary requirement of any Supreme

[6] Siemer v Chief Justice Sian Elias CIV2010 404 1909

Court position on the issuing of Minutes, where Minutes traditionally do not have judgment effect and obfuscate the open conduct and recording of Court decisions.

27. For the purposes of this application, the appellant relies on his affidavit and appended evidence dated 21May 2010, filed with the Supreme Court in support of the recall application on 4 June 2010.

Remedy Sought

A full hearing on the grounds and evidence provided in this and previous recall application.

The imprisonment order stayed pending a determination in relation to the recall.

Dated at Wellington this 14th day of June 2010.

Vince Siemer

Digitally signed by Vince Siemer
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Vince Siemer (appellant)

By his Counsel

CC: Crown Law
Sir Geoffrey Palmer, President of the New Zealand Law Commission
New Zealand Attorney General Chris Finlayson

The address for service is : Vince Siemer, 27 Clansman Terrace, Gulf Harbour
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