

IN THE SUPREME COURT OF NEW ZEALAND

[2014] NZSC 80

BETWEEN VINCENT ROSS SIEMER
Appellant

AND MICHAEL PETER STIASSNY & ANOR
Respondent

Court: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ
Counsel: Applicant in person
Judgment: 25 June 2014

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] Mr Siemer applies for recall of this Court's judgment in *Siemer v Stiassny* delivered on 13 June 2014.¹

[2] That judgment dismissed an application for review, pursuant to s 28(3) of the Supreme Court Act 2003, of a decision of Glazebrook J which dismissed an application for review of a decision of the Supreme Court Registrar, under s 28(2) of the Supreme Court Act.

[3] Mr Siemer's recall application is on the basis that Glazebrook and Arnold JJ should not have been on the Court for the s 28(3) review. This is because Glazebrook J conducted the review under s 28(2) and Arnold J had been involved

¹ *Siemer v Stiassny* [2014] NZSC 70.

with the matter at an earlier stage. Mr Siemer also says that he should have been given the opportunity to make submissions on the composition of the Court.

[4] The reason Glazebrook and Arnold JJ were on the Court was explained in the judgment,² by reference to this Court's decision in *Howard v Accident Compensation Corporation*.³ That case involved an application for review of a decision by McGrath J under s 28(2) of the Supreme Court Act. McGrath J was part of the Court deciding the s 28(3) review. In that case the Court said:⁴

A decision under s 28(3) is to be made by the "Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding". The subsection has obvious application to decisions made by a single Judge under s 28(1) or (2) being reviewed at the subsequent hearing of the substantive appeal. In such circumstances, the Judge who made the decision would probably be involved in the exercise (which is why McGrath J has participated in this decision). We are addressing the applicant's application on the assumption, but without deciding, that s 28(3) is available in the present, and rather different, circumstances.

[5] Mr Siemer was apparently unaware of this Court's decision in *Howard v Accident Compensation Corporation* and so did not make submissions on the composition of the Court in his s 28(3) application. He has, however, now had the opportunity to make submissions on this point in this recall application.

[6] The Court has considered Mr Siemer's submissions but is not persuaded that its interpretation of s 28(3), as set out in *Howard v Accident Compensation Corporation*, is wrong. The participation of Glazebrook and Arnold JJ on the Court was required by s 28(3),⁵ despite their earlier involvement in the matter.

[7] The application for recall is accordingly dismissed.

² At n 3.

³ *Howard v Accident Compensation Corporation* [2014] NZSC 31 (Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ).

⁴ At [3].

⁵ On the assumption a s 28(3) review is available in these circumstances: see *Siemer v Stiassny*, above n 1, at n 3.