IN THE NEW ZEALAND SUPREME COURT **SC 80 /2015**
Wellington

BETWEEN	**ALAN GREER** Applicant
AND	**RAY SMITH** First Respondent
AND	**JACK HARRISON** Second Respondent

APPLICATION FOR DISHARGE OR VARIATION OF CHAMBERS RULING UNDER Section 28(3) of the SUPREME COURT ACT 2003

2 November 2015

To the Registrar of the SUPREME COURT

the Applicant, apply under section 28(3) of the Supreme Court Act 2003 for a judgment reversing the 20 October 2015 ruling of O'Regan J prohibiting access to the publicly filed Application for Leave to the Supreme Court (**"the Chambers Minute"**).

UPON THE GROUNDS:

1. O'Regan J erred in law when concluding at [3] *"Applications for leave to appeal (to the Supreme Court of New Zealand) are not within the definition of a 'formal court record'."* The formal court record, by definition, includes Applications for Leave.
2. O'Regan J erred in law when materially concluding at [4] that public access to court records is limited to "representatives of such an organisation" as defined by the Judge – an irrelevant and arbitrary definition of public which excludes 99.9% of the actual public, thereby defeating the notion of public court access to records.
3. O'Regan J erred in failing to apply any of the four criteria the Chambers Minute ruled to be determinative.
4. A 'Minute' of the unrecorded type issued by O'Regan J cannot dispose of the Application it purports to dispose of because it is neither "public" nor "recorded".

PARTICULARS

5. Any one of the above grounds is fatal to maintaining the Chambers Minute as (1) and (2) define the relevant law in clearly untenable legal terms, (3) proves none of the relevant criteria were applied despite being judicially accepted as determinative and, as to (4), secret orders disposing of Supreme Court applications violate the common law and United Nations conventions.[1]
6. As to Ground 1, the Chambers Minute provides incontrovertible evidence that O'Regan J ruled formal Applications for Leave to the Supreme Court are not part of the formal court record of the Supreme Court of New Zealand.
7. Ground 2 is equally self-evident. There is no support whatsoever in law for O'Regan J's legal ruling that "public access" to court records **requires** "the public" be members of a small sub-segment of society which notably excludes virtually

[1] Authorities are legion and can be provided if necessary

every member of the public in addition to being subjective. Relevant to the novel legal finding, O'Regan J fatally failed to provide any support for such a legal restriction.

8. As to Ground 3, O'Regan J ruled as determinative in considering a request to access the public record of the Supreme Court of New Zealand:

   a. "The orderly and fair administration of justice,

   b. The principle of open justice,

   c. The privacy interests of the parties, and

   d. The freedom to seek and impart information."

   But then failed to apply any of these criteria.

9. Therefore, this Court is left to determine the issue according to these relevant criteria (which are not in dispute).

10. As to the first relevant criteria, it is implausible to suggest the orderly and fair administration of justice would be affected at all by public access because the administration of justice in this matter is concluded. As to the second criteria, there is little question that refusing 99.9% of the public access to public court records and leaving the remaining 0.1% subject to judicial discretion is an affront to open justice principles. As to the third criteria, privacy was not a concern in this case and, indeed, this potential restriction to public access was so inconsequential that the parties were not canvassed by the judge as to their views. Finally, freedom to seek and impart information is incontrovertibly defeated by the Chambers Minute which claimed this criteria sacrosanct.

11. The Chambers Minute on its face dismisses an "application" before the Supreme Court of New Zealand yet a private administrative Minute cannot lawfully dispose of a matter before the Court because it is not public and not recorded. **Section 27** of **The Supreme Court Act 2003** stipulates:

    27 Exercise of Powers of Court

    (3) The delivery of the judgment of the Supreme Court may be effected in any manner, and by any number of Judges, provided by rules made under section 51C of the Judicature Act 1908.

12. **Section 51C** of **the Judicature Act 1908**, in conjunction with r 11.3 of the High Court Rules, requires that judgments be issued publicly:

"11.3 How judgment given
(1) A Judge may give a judgment—
(a) in writing; or
(b) orally—
(i) if the conditions in subclause (2) apply; or
(ii) on an application without notice.
(2) The conditions are that the affected parties or their counsel have been given a reasonable opportunity—
(a) to be present when the judgment is given; or
(b) to hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link"

13. Moreover, every Judge of this Court has repeatedly represented to Parliament that they conduct Court business in public and by way of a "high visibility process":[2]

    "Moreover the judicial process is a high visibility process: hearings are conducted in public and judges must give reasons for their decisions, which will be subject to appeal. These features of the judicial process impose an important discipline on judges and provide an effective protection against arbitrary or biased decisions."

14. The common law imperative of publicly available court decisions providing an important discipline and protection against judicial misconduct is a recurrent retort promoted with force by every judge of this Court whenever legislation is proposed to make the judiciary accountable:[3]

    "The openness of the judicial process reduces the prospect of misconduct and of it going unremarked and unchecked. "Sunshine is the best disinfectant."

15. With respect to the Judges of this Court, all of whom have promoted the open principles above to Parliament as both their doctrine and what makes them accountable, the hypocrisy of issuing private minutes to refuse public access to public court records is beyond the pale.

16. If this Honourable Court's judgment on this Application does not **record** these four grounds as raised, application for recall will be necessitated on this ground and a complaint lodged with the *Office of the Judicial Conduct Commissioner* on the basis such failure is a deliberate attempt to conceal actual grounds off the record.

[2] REGISTER OF PECUNIARY INTERESTS OF JUDGES BILL - SUBMISSION ON BEHALF OF THE JUDICIARY, 30 August 2012
[3] SUBMISSION OF THE JUDGES OF THE HIGH COURT AND COURT OF APPEAL ON THE JUDICIAL MATTERS BILL, 8 December 2003