

**IN THE SUPREME COURT
OF NEW ZEALAND**

SC105/2015

UNDER THE

The Supreme Court Act 2003, Public Records
Act 2005, s27 of the New Zealand Bill of Rights
Act 1990, *Saxmere v Wool Board
Disestablishment Co NZSC [2009] and [2010]*

IN THE MATTER OF

Recall under *Horowhenua v Nash (No. 2)*

BETWEEN

RICHARD JOHN CRESER 4 Rothwell
Street, Titahi Bay, Porirua, Facilities Manager

Appellant

AND

**JANINE MICHELLE CRESER AND
ANOR AS EXECUTORS NOMINATED
IN THE WILL OF JESSIE JOY CRESER**

Respondents

AND

**ATTORNEY GENERAL of NEW
ZEALAND**

Intervener in the Public interest

**Application and Submissions for Recall or Correction under the Inherent
Jurisdiction of the Court**

Dated: 1 April 2016

To the **Registrar of the Supreme Court**

Janine Michelle Creser
Marion Ngaire Creser

Filed By Richard John Creser
4 Rothwell St
Titahi Bay
Porirua 5002

I, Richard John Creser, the Appellant, hereby apply for recall of this Court's judgment dated 10 March 2016 (unrecorded), referred to herein as "**The Judgement**":

UPON THE GROUNDS:

1. The Judgement failed to provide reasons as required by law.
2. The Judgement was made off the record and on this basis was unlawful as it failed to comply with statutory requirements of the Public Records Act 2005.
3. The Judgement, being legally unsafe in both of these respects and unable to be challenged by any mechanism other than recall, can only be made compliant with law by way of recall.
4. The Judgement's failure to provide reasons or to be made publicly are both Rule of Law breaches, warranting submissions by the Attorney-General in the public interest.

PARTICULARS

5. Section 16 of the Supreme Court Act 2003 requires reasons be given for judicial disposal of applications properly made to the Supreme Court of New Zealand. Notwithstanding this statutory requirement, the Judgment failed altogether to provide reasons.
6. *Inter alia*, in submissions to Parliament dated 20 August 2012, every judge on this Court represented that it was a rule of law requirement that they provide reasons for their decisions and that legislation providing for judicial accountability was unnecessary because of this rule of law requirement which is duly complied with. Specifically, all of you declared to Parliament:¹

[21] By contrast, judges in New Zealand's constitutional structure are concerned to determine the cases of individual litigants who come before them in accordance with law. While particular cases may raise significant policy issues, judges do not

¹ Submissions of the Chief Justice of the Supreme Court with the universal support of the judiciary to the *Justice and Electoral Select Committee* opposing the **Register of Pecuniary Interest of Judges Bill**

determine boarder issues of public or social policy on the basis of political philosophy or an assessment of what is in the best interests of the country in the way that politicians do; nor are they subject to the type of lobbying and special interest pressures that characterise the political process. **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.**”

[emphasis added]

7. This representation to Parliament was duly signed by Justice John McGrath of this Court as “the Acting Chief Justice of the Supreme Court of New Zealand”.
8. **This Judgement’s failure to provide reasons amounts to a rule of law breach, as well as a breach of the solemn representation each judge of this Court made to Parliament in 2012 with the intended purpose of preventing passage of legislation.**
9. Secondly, the Judgement was made off the record. If not corrected, this judicial action is an intentional violation of the statutory duty attached to every judge of this Court under **the Public Records Act 2005**, as section 3 plainly confirms this to be the Act’s primary purpose:
 - 3 The purposes of this Act are—
 - (c) to enable the Government to be held accountable by—
 - (i) ensuring that full and accurate records of the affairs of central and local government are created and maintained; and
 - (ii) providing for the preservation of, and public access to, records of long-term value; and
10. Section 4 of this Act confirms the members of this Court are legislatively bound to comply with this law:
 - 4 Interpretation
 - In this Act, unless the context otherwise requires, public office—
 - (a) means the legislative, executive, and **judicial branches** of the Government of New Zealand; and
 - (b) means the agencies or instruments of those branches of government; and
 - (c) includes (without limiting the agencies or instruments)—
 - (i) departments as defined in [section 2](#) of the State Sector Act 1988; and
 - (ii) Offices of Parliament as defined in [section 2\(1\)](#) of the Public Finance Act 1989; and
 - (iii) State enterprises as defined in [section 2](#) of the State-Owned Enterprises Act 1986; and
 - (iv) Crown entities as defined in [section 7\(1\)](#) of the Crown Entities Act 2004; and

- (v)the Parliamentary Counsel Office; and
- (vi)the Parliamentary Service; and
- (vii)the Office of the Clerk of the House of Representatives; and
- (viii)the New Zealand Police; and
- (ix)the New Zealand Defence Force; and
- (x)the New Zealand Security Intelligence Service; and
- (xi)any person or class of persons declared by an Order in Council made under [section 5\(1\)\(a\)\(i\)](#) to be a public office for the purposes of this Act.”

11. Section 8 of this Act leaves little doubt that where the judicial branch deliberately refuses to comply with this statute, a legal remedy is created:

8 Act binds the Crown

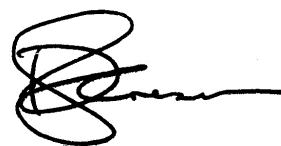
This Act binds the Crown.

12. This Recall application seeks only the two rule of law defects identified in the Judgment be corrected.

13. The power in law which is incumbent upon the A-G is the Cabinet manual 4.3 and the New Zealand Bill of Rights Act 1990, section 27.

14. This document forms the Applicant’s entire application and submissions.

This application is made in reliance upon the established principles of natural justice, the Court’s obligation to keep an accurate record and provide reasons for its decisions as required by s 16 of the Supreme Court Act 2003, sections 3,4 and 8 of the Public Records Act 2005, *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 122 (No 1 and No 2), *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (NZSC), *Atty Gen v Chapman* [2011] NZSC 110 and § 27 of the New Zealand Bill of Rights Act 1990.



Richard John Creser, Appellant

Cc: Respondents
Attorney-General