

**IN THE SUPREME COURT OF NEW ZEALAND**  
Wellington

**SC /2016**

UNDER

**The Common Law, Equity, The New Zealand  
Bill of Rights Act 1990 and s 59 of the Legal  
Services Act 2011**

IN THE MATTER OF

**A Civil Appeal**

**BETWEEN**

**MALCOLM EDWARD RABSON as  
TRUSTEE of the MALCOLM RABSON  
FAMILY TRUST**

173 Wellington Road  
Paekakariki  
Appellant

AND

**IAN BRUCE SHEPHERD AND CHRISTINE  
MARGARET DUNPHY**

Respondents

**APPLICATION FOR SECTION 40 REVIEW UNDER THE SUPREME  
COURT ACT 2003**

**21 October 2016**

Filed by: **M Rabson**  
**House 10, 618 Maungatautari Road,**  
**CAMBRIDGE.**  
**bluescape@xtra.co.nz**  
**phone 021 481020**

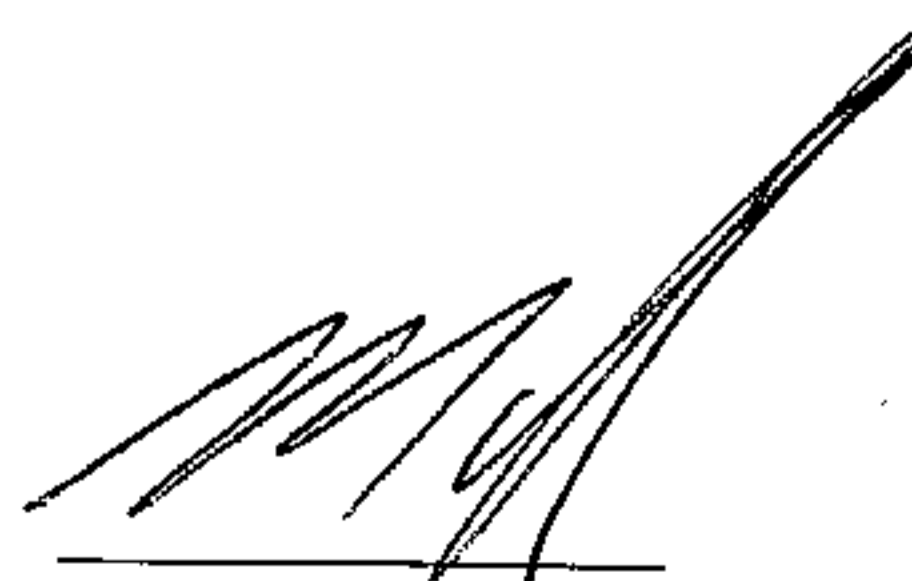
Under Section 40 of the Supreme Court Act 2003, the Proposed Appellant now applies for review of the Registrar's decision dated 14 October 2016 refusing to waive the filing fee on grounds the appeal seeks to clarify a question of law or address an issue of significant public interest ("**the Refusal**"), and seeks a direction that the filing fee be waived.

### **UPON THE GROUNDS**

- 1.0 The Refusal at paragraph 6 accepts "The appeal does concern a matter of genuine public interest" but, inconsistent with this finding, refused to waive the filing fee on this basis.
- 2.0 As to the question of law, the Refusal failed to address the questions of law but instead wrongly relied upon the reasons for dismissal in the Court of Appeal judgment now under appeal and wrongly stated the questions of law needing clarification deal strictly with the facts of this case.

### **FURTHER**

- 3.0 The Legal Questions at issue are not fact specific.
- 4.0 The Court of Appeal legal ruling that judges of that Court have the power to prevent legally aided appeals despite recognising legal aid to be a live issue, while applied to the facts of this appeal, is a legal ruling equally applicable to other legal aided appeals and it is upon this basis that discretionary judicial powers used to prevent access under the legal aid regime warrants review by this Court.
- 5.0 Under what circumstances judges of the Court of Appeal can prevent access despite recognising legal aid approval is unresolved is equally a question of broad public interest not limited to this appeal and not "fact specific to the case" as the Refusal concluded.
- 6.0 The Refusal did not address the questions of law requiring clarification. These again are:
  - 6.1 IN APPEALS WHERE LEGAL AID IS ACTIVELY BEING SOUGHT DOES IT VIOLATE THE RIGHT OF ACCESS TO JUSTICE FOR THE COURT OF APPEAL TO PREVENT THE APPEAL A HEARING WITHOUT ANY ANALYSIS OF THE MERITS OF THE APPEAL GROUNDS BEING PREVENTED?
  - 6.2 IN WHAT CIRCUMSTANCES IF ANY CAN THE COURT OF APPEAL LAWFULLY PREVENT A FIRST INSTANCE APPEAL DESPITE EXPRESSLY RECOGNISING LEGAL AID FUNDING IS STILL A LIVE AND UNRESOLVED ISSUE?



Malcolm Edward Rabson