

IN THE SUPREME COURT OF NEW ZEALAND

BETWEEN PHILIP JOHN SMITH
 Proposed Appellant

AND ATTORNEY-GENERAL
 Proposed Respondent

Counsel: T Ellis for Proposed Appellant

Date of Minute: 12 July 2010

MINUTE OF BLANCHARD J

[1] The Registrar has referred to me an application made on behalf of Philip John Smith for an order extending the time for filing an application for leave to appeal to this Court.

[2] The Court has power to make such an order under r 11(5) of the Supreme Court Rules 2004.

[3] Counsel's reason for seeking the order is to enable him to obtain a transcript of part of the hearing in the Court of Appeal. He suggests that it may reveal actual bias on the part of one of the Court of Appeal Judges. He plainly and rightly considers that it would be a serious breach of his professional obligations to make, in connection with the proposed appeal, any allegation of actual bias on the part of a Judge unless satisfied that there is a reasonable basis for doing so.

[4] Counsel also seeks an order from this Court directing the preparation of a transcript of the portion of the hearing (estimated by counsel to be the first 20–30 minutes) concerned with the argument about counsel's recusal applications.

[5] There is an appearance that, without orders of the kind sought by Mr Ellis, this matter will become bogged down procedurally. I therefore make orders:

- (a) directing the Registrar of the Court of Appeal to supply counsel for both parties with a transcript of the part of the Court of Appeal hearing on 23 June 2010 in CA 555/2008 identified above; and
- (b) extending the time for an application by Mr Smith for leave to appeal to this Court until 10 working days after receipt by counsel of that transcript.

[6] If the Registrar forms the view that it will not be possible to make and supply the transcript by 6 August 2010, she should advise counsel accordingly and, in that event, a further application may be made to this Court, if that should become necessary.