

**NOTE: EMPLOYMENT COURT ORDER PROHIBITING PUBLICATION
OF NAME AND IDENTIFYING PARTICULARS OF
APPLICANT REMAINS IN FORCE.**

**NOTE: ORDER PROHIBITING PUBLICATION OF THE TERMS OF THE
SETTLEMENT AGREEMENT PENDING RESOLUTION OF THE APPEAL
REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 14/2020
[2020] NZSC 47**

BETWEEN

TUV
Applicant

AND

CHIEF OF NEW ZEALAND DEFENCE
FORCE
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ
Counsel: A J Douglass and A S Butler for Applicant
J C Catran and J P A Boyle for Respondent
Judgment: 15 May 2020

JUDGMENT OF THE COURT

- A** Leave to appeal is granted (*TUV v Chief of New Zealand Defence Force* [2020] NZCA 12).
- B** The approved ground is:
- (i) Does the test in *O'Connor v Hart* [1985] 1 NZLR 159 (PC) (that a contract is not voidable for mental incapacity unless the other contracting party has actual or constructive knowledge of the incapacity, or equitable fraud is established) apply in the employment jurisdiction (in particular, to a settlement agreement that has been certified under s 149 of the Employment Relations Act 2000)?

(ii) If not, what is the relevant test and should the settlement agreement have been set aside in this case on the grounds of mental incapacity?

Solicitors:
McCarthy Law Ltd, Blenheim for Applicant
Crown Law Office, Wellington for Respondent