

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA29/2016  
[2016] NZCA 59**

BETWEEN                      EVGENY ORLOV  
   Applicant

AND                              NEW ZEALAND LAWYERS AND  
   CONVEYANCERS DISCIPLINARY  
   TRIBUNAL  
   First Respondent

AND                              NATIONAL STANDARDS  
   COMMITTEE NO 1  
   Second Respondent

Counsel:                      Applicant in person  
   W C Pyke for Second Respondent

Judgment:                      11 March 2016 at 3.00 pm  
(On the papers)

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**JUDGMENT OF STEVENS J**

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**The application to review the Deputy Registrar’s decision declining to waive the filing fee is dismissed.**

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**REASONS**

**Introduction**

[1]     In response to a number of statements Mr Orlov made about Harrison J, the National Standards Committee of the New Zealand Law Society (“National Standards Committee”) placed charges before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (“the Disciplinary Tribunal”). The Disciplinary

Tribunal found the charges proved<sup>1</sup> and, after a separate penalty hearing, struck him off the roll of barristers and solicitors.<sup>2</sup> Mr Orlov both appealed and sought judicial review of the Tribunal's decision in the High Court. The first appeal and judicial review were heard together. Ronald Young and Simon France JJ amended and upheld the substance of those charges, but revoked the penalty imposed.<sup>3</sup>

[2] Mr Orlov has appealed to this Court the judicial review aspect of the High Court decision as of right (CA555/2014).<sup>4</sup> In respect of the judicial review appeal, Mr Orlov filed an application to waive the filing fee on 23 September 2014 relying on the grounds in rr 5(3) and 5(4) of the Court of Appeal Fees Regulations 2001. On 2 October 2014 the Deputy Registrar granted the request for a waiver of the filing fee on the basis that Mr Orlov had no ability to pay the fee.

[3] Mr Orlov also seeks to bring a second appeal against the appeal aspect of the High Court decision. He requires leave to do so.<sup>5</sup> Simon France J declined an application for leave in the High Court.<sup>6</sup> Mr Orlov applied for leave in this Court by way of an application filed on 26 January 2016 (CA29/2016).

### **The application to waive the filing fee**

[4] When filing the application for leave Mr Orlov also applied to waive the filing fee. Unlike the earlier application, this application did not rely on the ground of inability to pay under r 5(3), but rather relied solely on r 5(4): that the appeal concerns a matter of genuine public interest and it will not move forward unless the fee is paid. Having considered the filing fee waiver application, the Deputy Registrar advised Mr Orlov of her decision refusing to waive the filing fee. On 20 February 2016 Mr Orlov applied for a review of the Deputy Registrar's decision.

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<sup>1</sup> *National Standards Committee v Orlov* [2013] NZLCDT 45.

<sup>2</sup> *National Standards Committee v Orlov* [2013] NZLCDT 52.

<sup>3</sup> *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987, [2015] 2 NZLR 606.

<sup>4</sup> An extension of time for appealing under s 66 of the Judicature Act 1908 was granted in *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZCA 605.

<sup>5</sup> Lawyers and Conveyancers Act 2006, s 254.

<sup>6</sup> *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2015] NZHC 3110.

[5] In her decision declining to waive the filing fee, the Deputy Registrar stated:

I have considered your application and I am of the view, that on the material you have supplied, there is not a question of law that is of significant interest to the public or to a substantial section of the public, rather the judgment relates to a particular set of facts relating to you. Your application for waiver of the filing fee is declined.

### **Grounds for seeking leave to appeal**

[6] In his application for leave to bring a second appeal Mr Orlov advances the following 12 “specific grounds”, quoted verbatim from the application:

1. The high court erred [at 78-80] in considering that justice Harrison’s own judgements could be sued in the proceedings against the appellant and/or failed to take into account s50 of the evidence act.
2. The high Court erred in holding that there was jurisdiction to prosecute lawyer (or that jurisdiction should have been exercised ) for a claim to the human rights tribunal and a judicial complaint made prima facie in good faith .
3. The high court erred in applying the sufficient foundation test and erred in the content of that test .
4. The high court erred [at 109-110] in amending the charges and without providing an opportunity for the appellant to make submissions . The high court further erred in holding that the charges could apply to the Appellants conduct
5. The high court erred [at 166] in permitting the appellant to be charged for matters which he had not drafted nor filed and where clearly another counsel was acting
6. The high court held that none of the evidence filed by the appellant could be sufficient foundation for making a complaint is perverse and constitutes an abdication of judicial responsibility and a denial of access to justice by a clearly perverse and irrational decision.
7. The High court errs in stating that the tribunal was not bias towards the appellant
8. The High Court errs in failing to address the evidence and submissions that the new Zealand law society, its prosecutor deliberately withheld from the Tribunal a series of cases (Moody Molloy and Bradbury and others) where allegations far more serious and with less foundation were made and where the national standards committee decided there was no jurisdiction to prosecute . The failure to address systematic prosecution and discrimination by the a law society and the Tribunal is a denial of access to justice

9. The High Court failed to address the submissions or the facts in a manner demonstrating denial of access to justice and an unfair trial.
10. The judicial officers had been close colleagues of Justice Harrison and had earlier sat on a case with him and thereby were biased and failed to give the appellant proper hearing and access to justice and/or should have recused themselves.
11. The disciplinary tribunal deliberately entered an unlawful and unfair judgment and unlawfully struck off the appellant and made findings which in law it could not have made, and/or the charges were an abuse of power and unknown to law. The High Court's decision replacing the charges and finding them made out was also an abuse of power and contrary to the principles of the ICCPR.
12. Detailed points of appeal to be formulated later.

[7] These grounds overlap in significant measure with the grounds advanced by Mr Orlov in support of his application for leave heard in the High Court. In declining leave, Simon France J identified some eight errors which Mr Orlov had claimed ought to be the subject of leave to appeal a point of law under s 254 of the Lawyers and Conveyancers Act 2006.<sup>7</sup> Simon France J concluded that none of the claimed “errors” met the test for an arguable error of law in relation to a matter that merits referral to this Court.<sup>8</sup>

### **Analysis**

[8] Is there, in the grounds advanced by Mr Orlov, a matter that could be said to be, as r 5(4) requires, of genuine public interest? I agree with the Deputy Registrar's conclusion that there is not. Each of the matters Mr Orlov seeks to raise relates to his own affairs arising from the charges brought against him by the National Standards Committee.

[9] No doubt alive to this point, Mr Orlov advanced the following grounds in his review application:

- no adequate reason was provided; and

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<sup>7</sup> *Orlov*, above n 6, at [4]–[16].

<sup>8</sup> At [3], applying the principles established by this Court in *Deliu v National Standards Committee of New Zealand* [2015] NZCA 399 at [18].

- this is a matter of public importance as it involves appeal against a decision finding misconduct for simply making a judicial conduct complaint which is discriminatory and contrary to law.

[10] Addressing the first ground, the Deputy Registrar did give reasons as outlined at [5] above. The reasons are succinctly stated and refer to the ground relied upon by Mr Orlov, the correct test and explain why this is not a matter of genuine public interest.

[11] As to the second ground, this is arguably one of the 12 grounds mentioned in the application for leave to bring a second appeal. It is certainly among the grounds which Simon France J rejected because they did not meet the “arguable error of law” test. The nature of this second ground clearly demonstrates that the issue Mr Orlov seeks to advance by way of second appeal concerns his particular personal circumstances arising from the charges brought by the National Standards Committee. It also raises a factual question as opposed to a point of law.<sup>9</sup>

[12] Mr Orlov has therefore failed to establish any error by the Deputy Registrar or any independent ground for a fee waiver. Having reviewed the Deputy Registrar’s decision, I uphold it.

## **Result**

[13] The application to review the Deputy Registrar’s decision declining to waive the filing fee is dismissed.

[14] Mr Orlov is reminded that if he wishes to pursue the application for leave to bring a second appeal he must pay the filing fee of \$1,100 to the Registrar. He may not take any further step in this proceeding until he has done so.

Solicitors:  
Meredith Connell, Auckland for Second Respondent

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<sup>9</sup> As required for an appeal to this Court under s 254 of the Lawyers and Conveyancers Act.