

IN THE SUPREME COURT OF NEW ZEALAND

SC 138/2015
[2016] NZSC 6

BETWEEN JEREMY JAMES McGUIRE
Applicant

AND WELLINGTON STANDARDS
COMMITTEE (NO 1)
First Respondent

THE LAWYERS AND
CONVEYANCERS DISCIPLINARY
TRIBUNAL
Second Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
T J Mackenzie for First Respondent
P J Gunn and M J McKillop for Second Respondent

Judgment: 15 February 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B Costs of \$2,500 are payable to the First Respondent.**
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REASONS

[1] Mr McGuire is a barrister and solicitor. The Wellington Standards Committee laid two disciplinary charges of misconduct against him in the Lawyers and Conveyancers Disciplinary Tribunal.

[2] As a result of an agreement reached between the parties, on the second day of the hearing the Tribunal was advised that the Standards Committee would withdraw

the first charge and asked to amend the second charge to allege unsatisfactory conduct rather than misconduct. The amendment application was granted and Mr McGuire pleaded guilty to the amended charge. He was formally censured and ordered to pay costs of \$14,700.

[3] Mr McGuire applied for judicial review of the Tribunal's decision. The High Court held that the Tribunal had erred in censoring Mr McGuire but upheld the costs decision. His claim for damages was dismissed. He was, however, awarded costs against the Standards Committee of \$14,700.¹

[4] Mr McGuire's appeal to the Court of Appeal was dismissed.² Costs on the appeal (with a 50 per cent uplift) were awarded to the Standards Committee.

Application for leave to appeal

[5] Mr McGuire applies for leave to appeal to this Court on the basis that:

- (a) the misconduct charges should not have been laid;
- (b) there was no jurisdiction to amend the second charge;
- (c) costs should not have been awarded against him in the Tribunal or the Court of Appeal; and
- (d) full (non-discounted) costs should have been awarded in the High Court.

Laying of misconduct charges

[6] Mr McGuire submits that the Standards Committee did not have the power to lay the misconduct charges "upholding its own motion investigation".

¹ *McGuire v Wellington Standards Committee (No 1)* [2014] NZHC 3042 (Mallon J). Mallon J had suggested reducing the category 2B costs by 25 per cent to reflect his partial lack of success: at [93]. Agreement was not reached between the parties and eventually costs were ordered with a 31 per cent reduction to reflect Mr McGuire's partial lack of success: *McGuire v Wellington Standards Committee (No 1)* [2015] NZHC 448 (Mallon J), at [11].

² *McGuire v Wellington Standards Committee (No 1)* [2015] NZCA 569 (French, Venning and Asher JJ).

[7] The Court of Appeal held that this argument “rests on a fundamental misunderstanding of the inquisitorial role of standards committees”.³ Nothing raised by Mr McGuire throws doubt on that conclusion.

Amendment of charge

[8] Mr McGuire maintains that reg 24 of the Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008 does not permit what was in effect the withdrawal of a charge and the laying of a new charge. He also says that an amendment can only occur during a hearing. In his submission a hearing did not occur because the Tribunal did not hear evidence.

[9] We accept the submission of the Standards Committee that this narrow interpretation of reg 24 is not warranted in the context of the disciplinary regime.⁴ Nothing raised by Mr McGuire in his submissions suggests a risk of a miscarriage of justice or a point of general public or commercial significance that would warrant leave being granted.

Costs

[10] No issue of principle arises. Nor does anything raised by Mr McGuire suggest the possibility of a miscarriage of justice.⁵ The criteria for leave to appeal are not met.

Result

[11] The application for leave to appeal is dismissed.

[12] Costs of \$2,500 are payable to the first respondent.⁶

³ At [25].

⁴ See for example *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987, [2015] 2 NZLR 606 (Ronald Young and Simon France JJ) and *Deliu v National Standards Committee of the New Zealand Law Society* [2015] NZCA 399 (Wild, White and Miller JJ).

⁵ The threshold for “miscarriage of justice” discussed in *Junior Farms Ltd v Hampton Securities Ltd (in liquidation)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

⁶ The second respondent abided by the decision of the Court on this application.

Solicitors:

New Zealand Law Society, Wellington for the First Respondent

Crown Law Office, Wellington for the Second Respondent.