

**NOTE: ORDER PROHIBITING PUBLICATION OF NAMES OR  
IDENTIFYING PARTICULARS OF DFT AND JDN IN [2021] NZHC 2080  
REMAINS IN FORCE.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 18/2023  
[2023] NZSC 57**

BETWEEN

DFT  
Applicant

AND

AUCKLAND HIGH COURT  
First Respondent

ATTORNEY-GENERAL  
Second Respondent

NEW ZEALAND LAW SOCIETY  
Third Respondent

Court: O'Regan, Williams and Kós JJ

Counsel: Applicant in person  
D Jones and N D White for Second Respondent  
P N Collins for Third Respondent

Judgment: 17 May 2023

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay to each of the second and third respondents costs of \$1,250.**
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## REASONS

### Background

[1] The applicant, Ms D, was unsuccessful in a custody dispute in the Family Court. Deeply unhappy with the outcome, she has commenced multiple collateral proceedings against, among others, her former partner, the court-appointed lawyer for her children and various government agencies.<sup>1</sup>

[2] Some of Ms D's litigation has been directed against RMC, who had been appointed by the Family Court as lawyer for her children. Ms D brought proceedings in the High Court challenging the New Zealand Law Society's (NZLS) response to her complaints regarding RMC (the High Court decision).<sup>2</sup> Toogood J struck out her proceedings against NZLS and RMC (the strike out order) and also found that Ms D's proceedings were an abuse of process.<sup>3</sup> In the Court of Appeal, Ms D sought an extension of time to appeal the strike out order under r 29A of the Court of Appeal (Civil) Rules 2005, almost a year out of time.<sup>4</sup>

[3] In the High Court decision, Toogood J also made an order that the Registrar should not receive further applications for filing relating to particular matters without the leave of a judge (the 2021 leave requirement).<sup>5</sup> Ms D made four appeals to the Court of Appeal which challenged instances in which her proceedings were not accepted for filing due to the 2021 leave requirement (the leave refusals).<sup>6</sup>

### Court of Appeal judgment

[4] In a consolidated decision, the Court of Appeal addressed Ms D's four appeals of the leave refusals and her application for an extension of time (the Court of Appeal decision).

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<sup>1</sup> A full history is given in the Court of Appeal's decision in *DFT v JDN & Ors* [2023] NZCA 15 (Cooper P, Courtney and Goddard JJ) [CA decision] at [10]–[16].

<sup>2</sup> *DFT v New Zealand Law Society* [2021] NZHC 2080 (Toogood J) [HC decision].

<sup>3</sup> At [43]–[45].

<sup>4</sup> CA decision, above n 1, at [94].

<sup>5</sup> HC decision, above n 2, at [51].

<sup>6</sup> These refusals were made by Jagose J in a series of minutes in which he assessed Ms D's filings against the requirements of the 2021 leave requirement.

[5] The Court of Appeal found that it would not be in the interests of justice to grant Ms D an extension of time to appeal the strike out order.<sup>7</sup>

[6] On the leave refusals, the Court of Appeal granted the appeal on the 2021 leave requirement, holding that the High Court could not cut across the statutory civil restraint regime by making an order under its own inherent powers, as it had done.<sup>8</sup> As such, the 2021 leave requirement and the leave refusals were set aside.

[7] Additionally, the Court of Appeal did not grant Ms D her desired costs of a total of \$126,000, or any disbursements.<sup>9</sup> Further, Ms D was ordered to pay costs to NZLS.<sup>10</sup>

### **The parties' submissions**

[8] Ms D now seeks leave to appeal against aspects of the Court of Appeal decision, namely:

- (a) the refusal of an extension of time in relation to a strike out application;
- (b) the Court of Appeal's decision not to grant her disbursements;
- (c) the costs order against her, and failure to make an award of costs in her favour.

[9] In support of her application, Ms D submits administrative and legal errors as well as breaches of natural justice.

[10] The NZLS and Attorney-General have filed submissions in opposition, stating that the statutory leave criteria are not met. The Attorney-General submits that Ms D's grounds of appeal relate to technical aspects of the judgment, or

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<sup>7</sup> CA decision, above n 1, at [111].

<sup>8</sup> At [80]–[81].

<sup>9</sup> At [114].

<sup>10</sup> At [117].

conclusions she disagrees with, and that the importance of the matter is to Ms D alone.

### **Our assessment**

[11] None of the leave criteria are met. Ms D's procedural complaints are particular to the circumstances of the case and do not involve matters of general or public importance.<sup>11</sup> Nor is there any appearance of a miscarriage of justice.<sup>12</sup>

### **Result**

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

[13] The applicant must pay to each of the second and third respondents costs of \$1,250.

Solicitors:

Crown Law Office, Wellington for Second Respondent

Gareth Smith, New Zealand Law Society, Wellington for Third Respondent

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<sup>11</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>12</sup> Section 74(2)(b).