



## THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

7 December 2018

### MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

*Attorney-General v Institution of Professional Engineers New Zealand Inc* [2018] NZHC 3211

Press summary

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The High Court has determined that the Institution of Professional Engineers New Zealand (the Institution) made an error of law when it decided it had no option other than to dismiss disciplinary proceedings against Dr Reay, an engineer whose firm designed the Canterbury Television (CTV) Building that collapsed in the 2011 Canterbury earthquake killing 115 people.

This means that, as a matter of law, the Institution is able to continue with the disciplinary proceedings against Dr Reay, which came to a premature end in 2014 when he resigned his membership of the Institution. Whether the Institution chooses to do so will be a matter for it to decide.

#### Background

The Institution is an incorporated society established in 1912. Its stated purpose is the advancement of the engineering professions in New Zealand. Under its Rules and Disciplinary Regulations, the Institution deals with complaints against members that they have breached their obligations, including under the Institution’s code of ethics.

Dr Reay was a member of the Institution at the time of his involvement in the design and construction of the CTV Building. He was also a member when, after the conclusion of a Royal Commission of Inquiry into a number of aspects of the Canterbury earthquakes, the Institution received two complaints concerning Dr Reay’s role in the project. This proceeding concerned the complaint made in December 2012 by Mr Stannard, who was, at the time, Chief Engineer at the Ministry of Business, Innovation and Employment.

The essence of Mr Stannard's complaint was that Dr Reay had breached the Institution's code of ethics in relation to his involvement with the CTV project. Dr Reay appeared before the Institution's Investigating Committee in August 2013. On 28 February 2014, the Committee completed a draft determination that the complaints warranted referral to a Disciplinary Committee. On the same day, but before circulation of the draft, Dr Reay resigned from the Institution, citing dissatisfaction with the way the Institution had responded to various issues. After receiving Dr Reay's resignation the Institution dismissed the disciplinary proceedings against him, believing that Dr Reay's resignation meant those proceedings could not continue.

The Attorney General applied to the High Court for judicial review of the Institution's decision to end its disciplinary proceedings.

Having determined there was the necessary public interest in allowing the judicial review to proceed, the central issue for determination by the Court was one of contractual interpretation, namely, whether the term "Member" in the relevant parts of the Institution's Rules and Disciplinary Regulations could legitimately be interpreted to apply to a person who had been a member at the time disciplinary proceedings had been commenced but who had subsequently resigned.

### Reasoning

In determining this issue, the Court had to consider the role and purpose of disciplinary proceedings to a voluntary professional association.

The Court concluded that allowing disciplinary proceedings to be brought to a premature end by the resignation of a member would flout the trust society places on professionals, and bodies such as the Institution, to ensure disciplinary proceedings are conducted in a way that produces a reasoned conclusion about the merits of the complaint. Such a consequence would be contrary to the very purpose of a voluntary professional body implementing disciplinary procedures; namely, to maintain the public's trust.

Accordingly, the Court determined the Institution had erred in law when its Investigating Committee dismissed Mr Standard's complaint on the basis of an incorrect interpretation of its Rules.

### Outcome

In deciding to grant the relief sought by the Attorney-General, the Court concluded there is an overwhelming public interest in allowing the Institution to determine whether or not it wishes to proceed with the complaint against Dr Reay.

The Court concluded that whilst Dr Reay's resignation meant it would not practically be possible to expel or suspend Dr Reay from the Institution, that was not determinative. There may be valuable lessons to be learnt from an assessment of Dr Reay's professional responsibilities in relation to the collapse of the CTV Building that can only be resolved through a disciplinary process. That is a factor, however, for the Institution to consider.

The Institution will now have to determine whether or not to continue with the disciplinary proceedings against Dr Reay.

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