

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF  
COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE  
ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 77/2021  
[2021] NZSC 172**

BETWEEN LLOYD ALEXANDER MCINTOSH  
Applicant

AND CHIEF EXECUTIVE OF THE  
DEPARTMENT OF CORRECTIONS  
Respondent

Court: William Young, O'Regan and Williams JJ

Counsel: A J Bailey for Applicant  
B C L Charmley for Respondent

Judgment: 3 December 2021

---

**JUDGMENT OF THE COURT**

---

**The application for recall of this Court's judgment of 27 October 2021  
(*McIntosh v Chief Executive of the Department of Corrections* [2021] NZSC 142)  
is dismissed.**

---

**REASONS**

[1] The applicant applies for recall of this Court's judgment of 27 October 2021, in which we dismissed his application for leave to appeal.<sup>1</sup>

[2] Although the basis for recall is not articulated, it appears to be on the basis that there is a very special reason requiring recall.<sup>2</sup>

---

<sup>1</sup> *McIntosh v Chief Executive of Department of Corrections* [2021] NZSC 142.

<sup>2</sup> *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

[3] The applicant says the Court misunderstood his counsel's argument in support of his application for leave to appeal. In his submissions in support of the applicant's leave application, counsel argued the Court of Appeal misinterpreted s 107IAA(1) of the Parole Act 2002. That provision sets out the matters of which the Court must be satisfied when assessing whether there is a high risk that an offender who is eligible to be made subject to an extended supervision order will commit a relevant sexual offence. The focus was on the factors in s 107IAA(1)(d) (remorse, acceptance of responsibility for past offending and understanding about the effect of the offending on victims).

[4] The Court of Appeal said the focus must be on whether the presence of one of the factors listed in s 107IAA(1)(d) was material, in the sense that it was present to a sufficient degree to mitigate the risk the offender poses. Counsel argued this was wrong because s 107IAA does not refer to the *effect* of the absence or presence of the s 107IAA(1) factors. He added: "What s 107IAA requires is an objective judicial determination as to whether an offender displays the respective state of minds or possesses the specified characteristics/qualities".

[5] This Court described that argument as an argument that any degree of remorse, acceptance of responsibility or understanding for the effect of the offending on victims is sufficient to rule out a finding that the criterion in s 107IAA(1)(d) is met. Counsel says he in fact accepted that "a requisite degree" of the relevant s 107IAA(1)(d) factor is required. He does not say what the requisite degree is and by what yardstick that would be measured if not by reference to the risk of future offending.

[6] We do not see this refinement of the applicant's argument as affecting our judgment. We saw the argument that the Court of Appeal's approach was wrong as having insufficient prospects of success to justify leave being granted. If we had articulated the applicant's argument in the manner he says we should have, the outcome would not have been different.

[7] The application for recall is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent