

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 40/2022
[2022] NZSC 103

BETWEEN TIMOTHY GRAEME LITTLE
 Applicant

AND NEW ZEALAND LAW SOCIETY
 Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person
 P N Collins for Respondent

Judgment: 26 August 2022

JUDGMENT OF THE COURT

A The application for recall of this Court's judgment of 23 June 2022 (*Little v New Zealand Law Society* [2022] NZSC 78) is dismissed.

B There is no order as to costs.

REASONS

[1] In a judgment delivered on 23 June 2022,¹ this Court dismissed Mr Little's application for leave to appeal against a decision of the Court of Appeal.² He now applies for recall of this Court's decision.

[2] The respondent filed a memorandum recording its opposition to the application for recall while indicating it did not intend to file submissions unless directed to do so. We do not require further assistance from the respondent.

¹ *Little v New Zealand Law Society* [2022] NZSC 78 (O'Regan, Ellen France and Williams JJ).

² *Little v New Zealand Law Society* [2022] NZCA 121 (Kós P, Brown and Goddard JJ).

[3] Recall may be granted in the following three circumstances:³

[F]irst, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[4] Mr Little filed 36 pages of initial submissions and then 16 pages of additional submissions. He does not say which of the three circumstances he relies on. Nothing in his submissions relates to the first circumstance, so we proceed on the basis that he relies on one or both of the second and third circumstances.

[5] Most arguments advanced by Mr Little merely relitigate points already raised in his submissions and rejected by this Court in refusing leave to appeal. They do not provide any 'very special reason' for recall.⁴

[6] Mr Little raises two new matters which he says are of 'plain relevance': the first, an Australian authority; the second, a New Zealand legislative provision. These relate to the second of the recall pathways. The Australian authority is *Victorian Building Authority v Andriotis*, decided by the Australian High Court.⁵ Mr Little says ss 5 and 45 of the Trans-Tasman Mutual Recognition Act 1997 require this Court to consider and apply that case.⁶ The New Zealand legislative provision Mr Little cites is s 27 of the New Zealand Bill of Rights Act 1990. Mr Little says the lower Courts denied his right to justice as guaranteed by that provision.

[7] *Victorian Building Authority v Andriotis* relates to a separate issue which was decided in the context of entirely different facts. It is not an authoritative decision of 'plain relevance'.

³ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; approved in this Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

⁴ See *Biddle v R* [2021] NZSC 129 at [4]; and *Foster v R* [2021] NZSC 130 at [4].

⁵ *Victorian Building Authority v Andriotis* [2019] HCA 22, (2019) 268 CLR 168.

⁶ Trans-Tasman Mutual Recognition Act 1997, s 5(1) provides: "Every law of New Zealand must, unless it or this Act otherwise expressly provides, be read subject to this Act." Section 45 provides: "For the purpose of promoting consistency between decisions made by the Tribunal for the purposes of this Act and the Australian Tribunal for the purposes of the Australian Act, the Tribunal must have regard to decisions made by the Australian Tribunal for the purposes of the Australian Act."

[8] Section 27 of the New Zealand Bill of Rights Act, while relevant in a general sense to all judicial decision making, is not engaged on these facts. The lower Courts considered Mr Little's arguments and dismissed them with reasons. This Court declined leave in accordance with s 74 of the Senior Courts Act 2016. Mr Little's right to justice under s 27 cannot, on any view, be said to have been breached.

[9] The application for recall is dismissed.

[10] There is no order as to costs.

Solicitors:
New Zealand Law Society, Wellington for Respondent