

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 13/2023

[2023] NZSC 69

RE

SANDY ZHUJUN DAI  
Applicant

Counsel: Applicant in person

Judgment: 19 June 2023

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JUDGMENT OF ELLEN FRANCE J

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**The application for review of the decision of the Deputy Registrar declining to waive the filing fee is dismissed.**

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REASONS

**Introduction**

[1] The applicant has applied for leave to appeal from a decision of the Court of Appeal.<sup>1</sup> The Court of Appeal in that judgment declined an application to review the Deputy Registrar's decision declining an application for waiver of the filing fee; declined an application to review the Deputy Registrar's decision not to dispense with security for costs; and declined an application to stay execution of a costs judgment made by the High Court.<sup>2</sup>

[2] On 26 May 2023 the Deputy Registrar of this Court declined the applicant's application for a filing fee waiver. This was on the basis the Deputy Registrar was not satisfied that the proceeding concerned a matter of genuine public interest. Rather, the

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<sup>1</sup> *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2023] NZCA 132 (Brown and Collins JJ) [CA judgment].

<sup>2</sup> *Dai v The Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2023] NZHC 278 (Churchman J).

Deputy Registrar considered that the judgment of the Court of Appeal declining the applications for review of the filing fee waiver and in relation to security for costs raised case-specific issues. The applicant seeks review of the decision of the Deputy Registrar maintaining that the appeal concerns a matter of genuine public interest as defined in the Supreme Court Fees Regulations 2003.<sup>3</sup>

## **Background**

[3] The background to the current proceeding relates to the decision of the Professional Conduct Committee (PCC) of the New Zealand Institute of Chartered Accountants (NZICA) to refer complaints against the applicant to the NZICA's disciplinary tribunal.<sup>4</sup> Not long after the referral was made, the applicant filed a statement of claim seeking judicial review of the PCC's decision along with various other applications in the High Court. The claim was struck out by Churchman J,<sup>5</sup> who also awarded costs against the applicant.<sup>6</sup>

[4] The decision of the Court of Appeal in issue followed on from the applicant's application to appeal from the strike out decision to that Court.

[5] In addition to the application for leave to appeal against the decision of the Court of Appeal, the applicant has also applied in this Court for a stay of execution of the High Court's costs judgment; a "stay of the Court of Appeal Proceeding"; and also seeks various declarations.

## **Application for review**

[6] The overall thrust of the applicant's notice of application for leave to appeal is that the purpose of her proceedings has been misapprehended in the Courts below, her submissions mis-stated and/or misunderstood, and critical evidence has been ignored. She points to various matters said to give rise to a miscarriage of justice.

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<sup>3</sup> Supreme Court Fees Regulations 2003, reg 5(2)(b) and 5(4).

<sup>4</sup> I understand that the complaints have since been determined (*Re Dai* 30 January 2023, Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants) and that the applicant has appealed.

<sup>5</sup> *Dai v The Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2022] NZHC 4 (presumably [2023] NZHC 4).

<sup>6</sup> *Dai*, above n 2.

[7] The applicant also wishes to address the appropriateness of the disciplinary tribunal as the avenue for legal proceedings. The applicant says that the question of law arising from her application is “whether the Judges failed to apply the correct statutory legal tests; took into account irrelevant facts; failed to take into account relevant facts; gave relevant facts insufficient weight; and/or made findings of fact based on no evidence”.

[8] Ultimately, the Court on the applicant’s proposed appeal would have to address whether the Court of Appeal erred in the decisions declining the three applications. Having reviewed the material filed by the applicant, I agree with the Deputy Registrar’s assessment that the proceeding does not concern a matter of genuine public interest as it turns on its particular facts. That means the Deputy Registrar is correct that there was no basis to grant a fee waiver in this case.

[9] In terms of the application for a fee waiver, the Court of Appeal said there was no adequate explanation of how the appeal had any public interest and nor did the review application “highlight how either of the” relevant grounds for a waiver were applicable.<sup>7</sup> The Court continued:

[15] ... This case is confined to a very fact-specific situation and in any event, Ms Dai has already paid the filing fee. As such, the proceedings could proceed. Ms Dai has not provided reasons why the proceedings could not proceed if the filing fee was not waived for public interest grounds.

[10] The Court considered that factor made the case unsuitable for a fee waiver under the relevant regulations.

[11] In relation to the application relating to the decision not to dispense with security for costs, the Court of Appeal applied the principles set out in this Court’s judgment in *Reekie v Attorney-General*.<sup>8</sup> The Court of Appeal concluded the appeal was without merit and had no public interest. The Court took the view this was not a proceeding that a solvent appellant would reasonably wish to prosecute.

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<sup>7</sup> CA judgment, above n 1, at [15].

<sup>8</sup> *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

[12] Finally, in relation to the decision to decline a stay of execution of the High Court's judgment as to costs, the Court of Appeal said that the applications for stay were unlikely to be treated as being in good faith. While the PCC was unlikely to be injuriously affected by a stay, there was no novel issue, no public interest, the appeal was far from strong, and the balance of convenience favoured the refusal of a stay. The Deputy Registrar's decision does not refer to the Court of Appeal's decision on the stay but I consider that part of the application similarly raises no issue of public importance.

[13] The Court of Appeal in declining these applications has applied orthodox principles. There is no real challenge to those principles. Rather the challenge is to the application of those principles to the particular facts. None of the matters raised by the applicant have any broader significance beyond the application to the present case. No questions of public importance arise. I add that nothing raised provides an explanation why this Court should grant the stay sought.

## **Result**

[14] The application for review is dismissed. If the applicant wishes to have the application for leave to appeal accepted for filing, the applicant must first pay the filing fee.