

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 21/2025
[2025] NZSC 122**

BETWEEN	ROBERT ERWOOD Applicant
AND	GRAEME EDWARD MINCHIN First Respondent
	ANTHONY DAVID BANBROOK Second Respondent
	GLASGOW HARLEY Third Respondent
	RAYLEE PATRICIA HARLEY Fourth Respondent
	JOHN ROBIN HOLMES Fifth Respondent

Court:	Glazebrook, Ellen France and Williams JJ
Counsel:	Applicant in person First Respondent in person No appearance for Second, Third, Fourth and Fifth Respondents
Judgment:	22 September 2025

JUDGMENT OF THE COURT

- A The application for an extension of time is dismissed.**
- B Costs of \$500 are awarded to the first respondent.**
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REASONS

Introduction

[1] Mr Erwood applies for an extension of time to file an application for leave to appeal against a judgment of the Court of Appeal (2024 Court of Appeal judgment).¹ This judgment dealt with and dismissed applications in respect of three separate proceedings commenced by Mr Erwood.

[2] The notice of appeal was filed on 14 February 2025. It was out of time as it should have been filed by 10 February 2025, the judgment having been delivered on 18 December 2024. Mr Erwood says that he only received the 2024 Court of Appeal judgment by post in January.

Background

[3] The procedural history is complicated and is set out in full in the 2024 Court of Appeal judgment.²

[4] The genesis of the three proceedings at issue was an action brought by Mr Erwood against the New Zealand Law Society and an insurance company with regard to losses suffered by him because of the collapse of law firm Renshaw Edwards in 1992. Ms Harley, instructed by Glasgow Harley, represented Mr Erwood in these proceedings.

[5] In 2002, Mr Erwood brought proceedings against Ms Harley and Glasgow Harley alleging negligence in the way in which they conducted his litigation. The High Court appointed a lawyer, Mr Minchin, to be Mr Erwood's litigation guardian. Mr Minchin arranged for Mr Holmes, a solicitor, to instruct Mr Banbrook (now deceased) as counsel.

[6] In October 2003, Mr Erwood was assessed by a psychiatrist who concluded he was not suffering from a mental disorder and that he no longer needed a litigation

¹ *Erwood v Glasgow Harley* [2024] NZCA 679 (Mallon, Cooke and Collins JJ) [2024 CAjudgment].

² At [2]–[16].

guardian. On 25 November 2003, Mr Banbrook and Mr Minchin attended a judicial settlement conference. Mr Banbrook did not notify the Court of the psychiatrist's report. The proceedings settled. Consent orders were made by Frater J.

[7] In January 2004, Mr Erwood commenced parallel proceedings to have the consent orders recalled and to have Mr Minchin removed as litigation guardian. On 15 December 2005, the High Court ruled that Mr Minchin's appointment as litigation guardian continued until his appointment was terminated by the Court. As a consequence, Mr Minchin was authorised to settle Mr Erwood's litigation, and there was no merit in Mr Erwood's application to have the consent orders set aside.³

[8] Mr Erwood then attempted to appeal, out of time, against the High Court's 15 December decision. The Court of Appeal declined special leave to appeal.⁴ Mr Erwood then applied to have the Court of Appeal recall that judgment. The Court of Appeal declined that application in 2008.⁵ On 2 April 2009, Mr Erwood applied for recall of that 2008 recall judgment. That application was dismissed in the 2024 Court of Appeal judgment.⁶

[9] Mr Erwood, in December 2004, had issued proceedings against Mr Holmes, with Mr Banbrook joined as second defendant in 2006 and Mr Minchin as third defendant in 2011. On 20 August 2019, Downs J issued judgment in the proceeding against Mr Holmes and Mr Minchin. The judgment concluded that neither lawyer was negligent.⁷ Mr Erwood's appeal against that decision was deemed abandoned on 24 November 2020. His application for an extension of time to appeal against Downs J's judgment was dismissed in the 2024 Court of Appeal judgment.⁸

[10] On 14 November 2019, Palmer J had dismissed Mr Erwood's claims against Mr Banbrook.⁹ Mr Erwood's application for an extension of time to appeal against this decision was dismissed in the 2024 Court of Appeal judgment.¹⁰

³ *Erwood v Glasgow Harley* HC Auckland CIV-2002-404-1663, 15 December 2005 (Harrison J).

⁴ *Erwood v Glasgow Harley* (2006) 18 PRNZ 329 (CA) (O'Regan, Robertson and Gendall JJ).

⁵ *Erwood v Glasgow Harley* [2008] NZCA 572 (William Young P, Robertson and Arnold JJ).

⁶ 2024 CA judgment, above n 1, at [17]–[22].

⁷ *Erwood v Holmes* [2019] NZHC 2049.

⁸ 2024 CA judgment, above n 1, at [23]–[32].

⁹ *Erwood v Holmes* [2019] NZHC 2693.

¹⁰ 2024 CA judgment, above n 1, at [33]–[35].

Submissions

[11] Mr Erwood claims that there has been a miscarriage of justice in his case where he, as an incapacitated person, was unable to pursue his challenge that Mr Minchin breached a duty of care as his litigation guardian, as well as his claims against Mr Holmes (solicitor) and Mr Banbrook (counsel). He submits that in any event he did not need a litigation guardian. In his submission these are questions of public importance.

[12] Mr Minchin submits that Mr Erwood's appeal to the Court of Appeal was grossly out of time with no exceptional circumstances to justify this. In any event, there is no point of general or public importance in the appeal given the historical nature of the substantive allegation, the fact that the obligations of counsel and a litigation guardian are complex and intersecting, and the fact that the events took place before the passage of the Lawyers and Conveyancers Act 2006. It is also submitted that there is no reasonable basis for the factual determinations of the High Court to be impugned on a second appeal. Mr Minchin also submits that there is no miscarriage of justice.

Our assessment

[13] Regarding the Court of Appeal's refusal to recall its 2008 recall decision, there is an issue as to jurisdiction given this Court does not have jurisdiction to hear appeals against leave or special leave decisions,¹¹ and this by extension relates to applications to recall such decisions.¹² In any event, the leave criteria are not met in this case.¹³

[14] In respect of the Court of Appeal's refusal to grant extensions of time to appeal against the two 2019 High Court decisions,¹⁴ no point of general or public importance arises.¹⁵ The Court of Appeal applied the standard principles in relation to extensions of time. Nor is there any risk of a miscarriage of justice, especially given the historical

¹¹ Senior Courts Act 2016, s 68(b).

¹² *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC) at [3]; and *Payne v Payne* [2005] NZSC 52 at [1].

¹³ See Senior Courts Act, s 74(2)(a) and (b).

¹⁴ This Court does have jurisdiction to hear an appeal against the Court of Appeal's refusal to grant an extension of time to appeal: see *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

¹⁵ Senior Courts Act, s 74(2)(a).

nature of the underlying proceedings.¹⁶ As there is no merit in the application for leave to appeal, there is no point in granting an extension of time.

Result

[15] The application for an extension of time is dismissed.

[16] Mr Minchin, representing himself, filed substantive submissions. Costs of \$500 are awarded in his favour.¹⁷

¹⁶ Section 74(2)(b). There is no miscarriage of justice in the sense used in criminal proceedings, let alone a miscarriage “of such a substantial character that it would be repugnant to justice to allow it to go uncorrected”, as is required for leave in civil cases: *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹⁷ According to r 14.4 of the High Court Rules 2016, the appropriate daily recovery rate is specified in sch 2 pt 2 to be \$500 where a party is acting in person. We award this sum in costs by analogy to this rule.