

**NOTE: HIGH COURT ORDER IN [2023] NZHC 692 PROHIBITING
PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING
PARTICULARS OF MR S, MRS S AND COUNSELLOR A REMAINS IN
FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 61/2025
[2025] NZSC 134**

BETWEEN	S (SC 61/2025) Applicant
AND	HEALTH AND DISABILITY COMMISSIONER Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person
M S Smith for Respondent

Judgment: 6 October 2025

JUDGMENT OF THE COURT

- A The application to file reply submissions and for an oral hearing is dismissed.**
 - B The application for leave to appeal is dismissed.**
 - C The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] Mr S seeks leave to appeal against a decision of the Court of Appeal of 26 May 2025.¹

¹ *Health and Disability Commissioner v S (CA231/2023)* [2025] NZCA 190 (Courtney, Goddard and Collins JJ) [CA judgment].

[2] The procedural history is complicated and is set out in full in the Court of Appeal judgment.² In brief, the proceedings stem from marriage counselling sessions with Counsellor A in 2011 which were attended by Mr S and his then wife. Mr S was not satisfied with the services provided by Counsellor A and made a complaint to the New Zealand Association of Counsellors | Te Roopu Kaiwhiriwhiri o Aotearoa (NZAC). Mr S did not agree with the NZAC's handling of the complaint and eventually, in February 2016, he made a complaint to the Health and Disability Commissioner | Te Toihau Hauora, Hauātanga (HDC) about Counsellor A.

[3] In her decision on the complaint, the Deputy HDC³ accepted that Counsellor A's services fell short of accepted practice in some respects. The Deputy HDC decided to take no further action pursuant to s 38(1) of the Health and Disability Commissioner Act 1994. In coming to that decision, she took into account the length of time since the services were provided, the fact that the NZAC Regional Ethics Committee had considered Mr S's complaint and put in place recommendations that Counsellor A had agreed to complete,⁴ as well as the fact that the NZAC had instituted a process of continuing professional development.⁵

Judicial review proceedings

[4] Mr S, being dissatisfied with the decision of the HDC, then issued judicial review proceedings against the HDC. He succeeded in part in the High Court.⁶ The Court of Appeal then found that the High Court was wrong to find that the HDC had made errors that justified intervention by way of judicial review.⁷ It therefore allowed the HDC's appeal. Mr S's cross-appeal, alleging, among other things,

² At [1]–[12] and [19]–[115].

³ Acting under delegated authority to carry out functions in relation to complaints and investigations: see at [55].

⁴ The decision was subject to written confirmation being provided that Counsellor A had completed the recommendations as well as details of any additional further education undertaken.

⁵ The Deputy Health and Disability Commissioner's decision is quoted in full at [60] of the CA judgment, above n 1. We note that she had provided a provisional copy of her decision on 10 March 2017, seeking comment from the parties. She finalised that decision without amendment on 12 May 2017: see at [56] and [61]–[66].

⁶ See the Court of Appeal's summary at [74]–[115] citing *S v The Health and Disability Commissioner* [2023] NZHC 692 (Duffy J).

⁷ CA judgment, above n 1, at [160]–[203].

pre-determination and bias, was dismissed.⁸ In terms of representation before the Court of Appeal, the Court said:

[229] We record that at the hearing of this appeal, Mr S was initially represented by Mr Russell. Mr Russell vigorously advanced Mr S's case and responded to questions from the Court, constrained only by a proper concern that his approach should be consistent with his responsibilities to the Court as counsel. Over the lunch adjournment Mr S appears to have formed the view that some of the arguments that he wished to advance would be more effectively presented by himself. He withdrew his instructions from Mr Russell. Mr Russell sought, and was granted, leave to withdraw as counsel. Mr S then presented his own submissions, including re-traversing some aspects of the appeal that had already been addressed by Mr Russell. We allowed Mr S some latitude in this respect, to ensure that he had the opportunity to put his argument in the manner that he preferred.

Application to file reply submissions and for an oral hearing

[5] On 22 September 2025, Mr S filed an application to file reply submissions and for an oral hearing. This application was opposed by the respondent on the basis that the application for leave can be fairly and justly determined on the papers based on the submissions already filed.

[6] Mr S's application is dismissed. The Court would not be assisted by reply submissions or an oral hearing.

Grounds of Mr S's leave application

[7] Mr S alleges that he had ineffective assistance from counsel in the Court of Appeal and that the Court of Appeal did not take into account his oral submissions. He also seeks to argue that there is gender bias in the system.

[8] Leave is opposed by the HDC.

Our assessment: leave application

[9] We accept the submission of the HDC that it is not necessary in the interests of justice to grant Mr S's application for leave to appeal as it does not raise a matter of general or public importance.⁹ His proposed appeal relates to the particular

⁸ At [204]–[228].

⁹ Senior Courts Act 2016, s 74(1) and (2)(a).

circumstances of his case and nothing raised by him suggests that the Court of Appeal was wrong in its assessment of the appeal and cross-appeal grounds before it. Nor does anything raised suggest that there has been a miscarriage of justice in the sense used in the civil context.¹⁰

Result

[10] The application to file reply submissions and for an oral hearing is dismissed.

[11] The application for leave to appeal is dismissed.

[12] The applicant must pay the respondent costs of \$2,500.

Solicitors:

J I King, Office of the Health and Disability Commissioner, Wellington for Respondent

¹⁰ Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].