

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 57/2025  
[2025] NZSC 141

BETWEEN	INGENIOUS ASSET MANAGEMENT LIMITED Applicant
AND	SIMON MCCONNON First Respondent
	JOHN BAIRD MCCONNON Second Respondent
	KEVIN BRUCE RAMSEY Third Respondent
	STEPHEN MARK LAWRENCE Fourth Respondent
	CHRISTOPHER CAREY MCCULLAGH Fifth Respondent

Court:	Ellen France, Williams and Kós JJ
Counsel:	G Jindal for Applicant M J Wallace and K L Maclean for First and Second Respondents K P McDonald for Third Respondent R M Stewart and A J Wakeman for the Fourth and Fifth Respondents
Judgment:	16 October 2025

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JUDGMENT OF THE COURT

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- A**     **The application for leave to appeal is dismissed.**
- B**     **There is no order as to costs.**
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## REASONS

### Introduction

[1] In the context of proceedings brought against the present respondents in the High Court, the applicant sought access to recordings of hearings and conferences under the Senior Courts (Access to Court Documents) Rules 2017. The High Court declined to grant access. The applicant then sought to file notices of appeal in the Court of Appeal against two of the decisions declining access.<sup>1</sup>

[2] A Deputy Registrar of the Court of Appeal refused to accept the notices of appeal for filing. That was because the Deputy Registrar determined the appeals were against interlocutory decisions. That meant the appeal pathway was for the applicant to have sought and obtained leave to appeal from the High Court.<sup>2</sup> The applicant had not followed that pathway, so there was no jurisdiction for the appeals.

[3] The applicant sought reviews of the Deputy Registrar's decisions. Mallon J declined the applications for review.<sup>3</sup> The applicant seeks leave to appeal to this Court from the decision of Mallon J. The applicant also seeks clarification as to the identification of the correct parties, submitting that the rights of the five respondents were not engaged when the Deputy Registrar refused to accept the documents for filing or when Mallon J declined the applications for review. The first, second, fourth and fifth respondents oppose any change to the parties, but all respondents abide the Court's decision as to leave.

### Background

[4] The decisions on applications for access to recordings which gave rise to the notices of appeal in the Court of Appeal are described by Mallon J as follows:<sup>4</sup>

[4] In the High Court proceeding, Associate Judge Brittain gave a costs judgment against the applicant following an unsuccessful opposition to a decision ordering the applicant to pay security for costs in the proceeding and

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<sup>1</sup> *Ingenious Asset Management Ltd v McConnon* [2024] NZHC 3137 (Van Bohemen J); and *Ingenious Asset Management Ltd v McConnon* HC Auckland CIV-2023-404-2103, 21 October 2024 (Muir J).

<sup>2</sup> Senior Courts Act 2016, s 56(3).

<sup>3</sup> *Ingenious Asset Management Ltd v McConnon* [2025] NZCA 143 [CA judgment].

<sup>4</sup> Footnotes omitted.

related applications. The applicant wished to appeal the costs judgment. For that purpose, it requested the recordings of the hearing on the application for security for costs as well as of callover and case management conferences in the proceeding. The request was declined by Van Bohemen J because the applicant had no credible basis for its assertion that it needed access to the recordings of the hearing and conferences to pursue its appeal, and that allowing it to put those recordings in evidence on appeal would be wasteful of judicial time and the Court's resources. It would therefore not be [consistent] with the orderly and fair administration of justice, nor inconsistent with the right to bring and defend civil proceedings or with the principle of open justice.

[5] The applicant also requested access to the recording of a hearing before Muir J in which it had unsuccessfully sought to have the case management of its proceeding transferred from the Associate Judge to a High Court Judge. Muir J declined the request noting that, in the context of a rather routine matter, no basis for why it was necessary to have access to the recordings was apparent and no basis had been made out by the applicant. Further, allowing the application could result in further delay to an already attenuated proceeding.

[5] In upholding the Deputy Registrar's decision not to accept the notices of appeal against these decisions for filing, Mallon J concluded that a request for access to court records was an "interlocutory application" in terms of s 56(3) of the Senior Courts Act 2016 if made by a party to a proceeding and in relation to the proceeding.<sup>5</sup> Contrary to the applicant's argument, the fact the request for documents was informal did not change the character of the application for the purposes of s 56(3).

### **The proposed appeal**

[6] The applicant says the proposed appeal raises matters of "general public importance" including access to justice.<sup>6</sup> Amongst other matters the applicant wishes to pursue the argument made in the Court of Appeal that informal requests for court documents are not interlocutory applications. The applicant also says the distinction made in the Court of Appeal between party and non-party requests has no statutory basis and reflects a form over substance approach.<sup>7</sup>

[7] In dismissing the applications for review Mallon J observed that the relevant definition of "interlocutory application" in s 4(1) of the Senior Courts Act "does not turn on the form" of the application. Rather, the Judge noted, that definition focuses

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<sup>5</sup> The position was different if the request was made by a non-party.

<sup>6</sup> Senior Courts Act, s 74(2)(a). We formally extend time for filing submissions for the applicant.

<sup>7</sup> Contrary to *Mafart v Television New Zealand Ltd* [2006] NZSC 33, [2006] 3 NZLR 18.

on whether, relevantly, there has been “any application to the High Court in any civil proceedings” for “an order or a direction relating to a matter of procedure” or for “some relief ancillary to that claimed in a pleading”.<sup>8</sup> The Court said it was clear the requests for access to the recordings were “applications” in the proceeding. Further, the applications could be seen as either “relating to a matter of procedure”, that is, concerning the pursuit of an appeal; or for “relief ancillary to that claimed in a pleading”, namely, “an order granting access to the recordings for the purposes of possible appeals of decisions on interlocutory applications”.<sup>9</sup>

[8] Mallon J also emphasised the purpose of the requirement to obtain leave to appeal interlocutory applications in s 56(3) was to reflect that such appeals can result in unnecessary delay to the substantive proceeding. The Judge said, “[t]he leave filter enables appeals from interlocutory applications to be granted in appropriate cases.”<sup>10</sup> Mallon J saw the present case as illustrating the point, citing the following description in one of the High Court decisions on case management:<sup>11</sup>

[15] All of this interlocutory activity arises in the context of a proceeding which was commenced in September 2023, but which has already generated multiple interlocutory applications and applications for variation, reconsideration, reversal or rescission by [the applicant]. Everything can be traced back to the judgment of the Associate Judge on 21 March 2024 granting the Defendants’ application for security for costs. That judgment was never appealed. Subsequently, costs were awarded on the application. [The applicant] has sought leave to appeal that respect. There have also been multiple skirmishes around access to court documents, variations to timetables and the like. In total, the Defendants identify [the applicant] as having filed 21 memoranda since the inception of the proceeding. A year after filing, very little progress has been made in addressing the substance of the case.

[9] Against this background, nothing raised by the applicant satisfies us that it is in the interests of justice to hear and determine the proposed appeal.<sup>12</sup> The proposed appeal would largely have this Court reprise the arguments addressed by the Court of Appeal. We do not see the prospects of success as such to warrant determination by this Court particularly where, on the information before us, the underlying applications for access do not appear to have a great deal of merit. Further,

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<sup>8</sup> CA judgment, above n 3, at [16].

<sup>9</sup> At [17].

<sup>10</sup> At [19].

<sup>11</sup> At [19] citing *Ingenious Asset Management Ltd v McConnon* [2024] NZHC 2982.

<sup>12</sup> Senior Courts Act, s 75(2).

as the Court of Appeal said, leave to appeal can be sought and obtained from the High Court in appropriate cases.

[10] Finally, we note that the respondents are properly named as respondents as they are affected by the decision which, at the least, must have some impact on the resolution of the litigation to which they are parties.

## **Result**

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

[12] There is no order as to costs.

Solicitors:

Ormiston Legal, Auckland for Applicant

Kevin McDonald & Associates, Auckland for Third Respondent

Copy to:

Fee Langstone, Auckland for First, Second, Fourth and Fifth Respondents