**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 1/2025**
**[2025] NZSC 53**

IN THE MATTER OF TANYA FELICITY DUNSTAN
Applicant

Court: Ellen France and Williams JJ

Counsel: Applicant in person
D J Perkins and O Kiel for Attorney-General as Intervener

Judgment: 14 May 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] The applicant, Ms Dunstan, has in recent years brought a number of proceedings in a variety of courts. In a judgment delivered on 10 November 2023, the High Court found that six of those proceedings (the candidate proceedings) were totally without merit.[1] That threshold having been met, the High Court made a general order under s 166 of the Senior Courts Act 2016 (the Act), restraining Ms Dunstan from commencing or continuing civil proceedings in any of the senior courts and the District Court (including the Family Court) without leave of a judge of the High Court. The order is in place for a term of three years.

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1 *Re Dunstan* [2023] NZHC 3176 (Brewer J).

[2] Ms Dunstan appealed unsuccessfully to the Court of Appeal against the making of the s 166 order.[2] She has now filed an application for leave to appeal to this Court against the decision of the Court of Appeal. As was the case in the Court of Appeal, the Attorney-General was granted leave to intervene.[3]

**Background**

[3] Section 166 of the Act makes provision for three kinds of civil restraint order—limited, extended and general. A general order, as imposed in this case, restrains a party from commencing or continuing any civil proceeding without leave, rather than just proceedings on particular or related matters. Section 167(3) sets out the grounds for making a general order, namely:

> … if, in at least 2 proceedings about any matter in any court or tribunal, the Judge considers that the proceedings are or were totally without merit.

[4] The High Court can make such an order, as it did here, on its own initiative.[4]

[5] In dismissing Ms Dunstan's appeal, the Court of Appeal said the approach to the making of a s 166 order entails two-steps, first, whether there are at least two proceedings that are totally without merit and, second, whether to exercise the discretion to make an order. In this case, as we have said, the High Court found the candidate proceedings were totally without merit. The Court of Appeal concluded that the High Court was wrong to treat one of those six proceedings as totally without merit but considered that the threshold of two proceedings was "well-exceeded".[5] In reaching this view, the Court of Appeal proceeded on the basis a proceeding was "totally without merit" if it was bound to fail.[6]

[6] In considering the question of whether an order should have been made the Court of Appeal said it was "clear the nature and extent of Ms Dunstan's unmeritorious

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2 *Re Dunstan* [2024] NZCA 683 (Courtney, Mander and Osborne JJ) [CA judgment].
3 *Re Dunstan* [2025] NZSC 22 (Glazebrook, Ellen France and Williams JJ).
4 Senior Courts Act 2016, s 169(3).
5 CA judgment, above n 2, at [118].
6 At [2], citing *Mawhinney v Auckland Council* [2021] NZCA 144, [2021] 3 NZLR 519 at [58]. This Court refused leave to appeal: *Mawhinney v Auckland Council* [2021] NZSC 122 [*Mawhinney* (SC)].

litigation, … called for the making of a s 166 order".[7] The Court also said a general order was necessary "having regard to the volume of unmeritorious civil claims Ms Dunstan has been bringing in multiple different courts".[8] The three year period was also appropriate given "[t]he extended period over which" the proceedings spanned.[9]

**The proposed appeal**

[7] The proposed grounds of appeal can be broadly grouped into the following categories:

(a) matters directed to aspects of the substance of the Court of Appeal's judgment, for example, that the legal merit of the candidate proceedings was ignored and background material was improperly relied on in determining the question of merit;

(b) challenges based on breaches of natural justice and other procedural errors Ms Dunstan attributes to both the High Court and the Court of Appeal, for example, the decision of the High Court to proceed without hearing from her orally and the refusal of the Court of Appeal to allow her support person to appear by audio-visual link;

(c) a jurisdictional issue said to arise because Osborne J, a High Court Judge, was on the panel determining the appeal; and

(d) errors arising from the failure of various judges to recuse themselves.

[8] We add that we have not set out all of the proposed grounds (numbering over 20) but this broad summary is sufficient for present purposes to encapsulate the gravamen of the matters Ms Dunstan says have given rise to a miscarriage of justice, raise questions of general or public importance and are of commercial significance.[10]

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7 CA judgment, above n 2, at [123].
8 At [123].
9 At [123].
10 Senior Courts Act, s 74(2).

[9] This Court has said that the nature and scope of considerations relevant to whether a proceeding is "totally without merit" in the context of s 166 orders may give rise to a question of general or public importance which the Court may wish to consider at some point.[11] However, to the limited extent this proposed appeal raises questions about that threshold and questions about the application of the threshold test, there cannot realistically be any prospects of a successful appeal. This case is not an appropriate case to consider these issues.

[10] Nor do we consider anything raised by the applicant gives rise to an appearance of a miscarriage of justice as that term is used in civil proceedings.[12]

[11] In this context we note also that the High Court by minute advised Ms Dunstan the Court was considering making a s 166 order and identified the candidate proceedings. Ms Dunstan was told to advise the Registry if she wished to be heard. She responded but did not request an oral hearing. In her written response, Ms Dunstan addressed the merits of the candidate proceedings. Ms Dunstan appeared for herself in the Court of Appeal. As the submissions for the Attorney-General note, whether a McKenzie friend is permitted to assist a litigant remains at the Court's discretion, under the inherent or implied powers to regulate the Court's own processes.

[12] Section 48 of the Act permits Osborne J's membership of the divisional Court of Appeal.[13]

[13] Finally, the Court of Appeal judgment largely dealt with the various issues about recusal that Ms Dunstan wishes to raise in this Court. We see no error in the approach the Court took to these matters, and we consider there are no reasonable prospects of success on appeal in relation to other recusal matters Ms Dunstan seeks to advance.

**Result**

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

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11 For example, see *Mawhinney* (SC), above n 6, at [8].
12 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].
13 See in particular Senior Courts Act, s 48(1) and (2).

[15] There is no order as to costs.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Intervener