IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 8/2025
[2025] NZSC 78

BETWEEN	FRANCISC CATALIN DELIU Applicant
AND	ATTORNEY-GENERAL First Respondent
	DEPUTY SOLICITOR-GENERAL Second Respondent

Court: Williams, Kós and Miller JJ

Counsel: Applicant in person
D L Harris and A A A Ghandour for the Respondents

Judgment: 8 July 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500.

REASONS

Background

[1] In 2017 and 2018, the applicant was charged with two counts of assault with a weapon and one of attempting to pervert the course of justice. He left the country in 2018 and has not returned. Between 2020 and 2022, the applicant twice requested that those proceedings be stayed as they were, he claimed, the result of serious police misconduct.[1] The Deputy Solicitor-General acting under delegation from the

[1] See *Deliu v Attorney-General* [2023] NZHC 1159 (Harvey J) at [11]–[14].

Attorney-General (pursuant to ss 9A and 9C of the Constitution Act 1986) declined to do so on each occasion.

[2] The applicant brought judicial review proceedings challenging both the delegation and the refusal. The challenge was on natural justice and substantive grounds. His application was dismissed in the High Court and the Court of Appeal and he now applies for leave to appeal against the decision of the latter Court.

[3] The detailed factual and procedural history is set out in the judgments of the courts below and it is unnecessary to repeat much of that detail here.

[4] In the High Court, Harvey J considered that the courts should exercise restraint in reviewing the exercise of prosecutorial discretion including decisions regarding stays,[2] that the applicant had no right to be heard prior to the stay decision being made, and that, in any event, the reasons given by the Deputy Solicitor-General for her decision were sufficient to the purpose.[3] The applicant appealed, but before the appeal could be heard the Deputy Solicitor-General considered the matter for a third time, and on this occasion agreed that the prosecution should, in all the circumstances, be stayed. The applicant pressed on with his appeal.

[5] The Court of Appeal found that the appeal had become moot and dismissed it.[4]

[6] The applicant's three grounds of appeal are that the Court of Appeal erred in that decision by:

(a) ruling the appeal was entirely moot;

(b) refusing to resolve an important and novel question of law, even if the appeal was moot; and/or

(c) not addressing his position and demonstrating bias in favour of the Crown.

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2 At [72] and [77].
3 At [95] and [85].
4 *Deliu v Attorney-General* [2024] NZCA 697 (Goddard, Katz and Cooke JJ) [CA judgment].

[7] The applicant submits that, despite the stay, his appeal is not entirely moot as he seeks a declaration that his natural justice rights, protected by s 27 of the New Zealand Bill of Rights Act 1990, were breached in the earlier decisions. He submits that, despite the second respondent's finding in his favour on reconsideration, the vindication of a declaration that his s 27 rights have been breached remains constitutionally important.

[8] The applicant's second submission is that the Court of Appeal failed to address his substantive submissions regarding the inconsistency of the doctrine of judicial restraint in respect of prosecutorial discretion with the approach required by *Hansen v R*.[5]

[9] Thirdly, the applicant submits that the Court of Appeal merely "rubber stamped" the respondents' submissions while "virtually entirely ignoring" his, contravening the duty to be a neutral and independent arbiter.

[10] The respondents oppose the grant of leave, arguing that the Court of Appeal was correct to find the appeal was moot. The applicant had achieved the result he sought and any further relief, including the discretionary remedy of a declaration, would have served no useful purpose.

[11] As to the applicant's claim that judicial restraint in respect of prosecutorial discretion is inconsistent with the approach in *Hansen v R*, the respondents submit that in light of the importance of prosecutorial discretion independently exercised, the argument is untenable. The same submission is made with respect to the claim of bias.

Analysis

[12] We see no risk of a substantial miscarriage of justice if the appeal is not heard.[6] As the Court of Appeal found, the applicant has in fact succeeded in the way that matters most and the question becomes then whether further vindication by way of declaration is appropriate in exercise of the court's discretion. We see no reason to depart from the Court of Appeal's view that a declaration would have no utility in the

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5 *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1.
6 Senior Courts Act 2016, s 74(2)(b).

context of this case.[7] Further, while the application of a *Hansen* analysis to the exercise of prosecutorial discretion might, in other circumstances, involve questions of general or public importance, on the facts, that is plainly not the position here.

Result

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

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

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

7 CA judgment, above n 4, at [13].