



## **THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA**

29 April 2025

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**ELIZABETH MARGARET AITKEN v JUDICIAL CONDUCT COMMISSIONER v  
ATTORNEY-GENERAL**

**[2025] NZHC 987**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

**[NOTE: The judgment contains a suppression order. See below.]**

### **What is the case about?**

On 23 January 2025 the Judicial Conduct Commissioner recommended to the Attorney-General that she appoint a Judicial Conduct Panel to inquire into matters concerning the alleged conduct of a serving District Court Judge, Ema Aitken (referred to as “the Judge” throughout this press release). The events giving rise to the case took place in the Northern Club in November 2024. The Judge briefly left a private function attended by judges and their partners and had an interaction with some attendees of a separate function held by New Zealand First.

On 10 February 2025 the Judge filed proceedings seeking judicial review of the Commissioner’s decision; and interim orders preventing the Acting Attorney-General from appointing a Judicial Conduct Panel until the Judge’s application for judicial review had been determined. The High Court granted interim orders on 17 February 2025. The judgment released today relates to the Judge’s application for judicial review of the Commissioner’s decision.

### **What are the issues the Court had to consider?**

The High Court had to review the Commissioner’s decision recommending the appointment of a Judicial Conduct Panel and decide whether the errors alleged by the Judge were made out.

The Judge argued there were four errors in the decision. They were:

- (a) the Commissioner failed to articulate the legal standard against which he measured the Judge's alleged conduct (see [37]–[45]);
- (b) the Commissioner failed to provide any or any sufficient reasons for his decision contrary to a requirement to do so in s 18(2) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (see [60]–[68]);
- (c) the Commissioner's decision was not based on sufficient enquiry of the alleged conduct (see [87]–[91]);
- (d) the Commissioner's decision failed to identify precisely what conduct is in scope for a panel to consider (see [99]–[110]).

### **What did the Court decide and why?**

The Court found that none of the errors were made out. First, while the Commissioner's decision did not expressly set out any legal standard warranting consideration of removal of a judge, this was not an error of law. The case involved a single allegation of misconduct. The Judge did not argue the wrong standard had been applied by the Commissioner. Her position was instead that the most serious features of the alleged conduct had not occurred or were missing. It was plain from the Commissioner's decision that the correct standard had in fact been applied and factual differences between the Judge's account and the complaints were matters for a Conduct Panel to determine, if appointed. (See [46]–[55]).

Second, the Court found that although the Commissioner's reasons were briefly stated, they were sufficient to explain how he reached the conclusions that he did. The reasons described the alleged conduct, setting out the details of the complaint; explained the Judge's response; explained that the Commissioner considered there was a genuine factual contest which required a panel's investigation; and explained why the alleged conduct was sufficiently serious to warrant consideration of removal. (See [69]–[85]).

Third, the Court found that the decision was based on a sufficient preliminary examination. There was no legal obligation on the Commissioner to undertake the additional enquiries the Judge argued for. The Commissioner's role is limited to conducting a preliminary examination and does not extend to fact-finding. (See [92]–[97]).

Finally, the Court found the Commissioner adequately determined the initial scope of any eventual Panel inquiry. On a natural reading of the Commissioner's decision, it was clear that the conduct the Commissioner identified as worthy of consideration of removal was the brief engagement between the Judge and people attending the New Zealand First function. (See [111]–[127]).

Given the conclusions on the four errors alleged by the Judge, the claim for judicial review failed. The Court considered that the decision was reasonably open to the Commissioner and that while brief, the decision did not contain any material errors.

**What orders has the Court made?**

The Judge's application for judicial review was dismissed.

The interim orders made are to continue for 48 hours after issue of the judgment, after which they will expire if not renewed.

Originally an order was made suppressing publication of any aspect of the Commissioner's proceedings referred to in the judgment, to the extent they were not already in the public domain. However, that order has now been discharged. There remains a suppression order on the name of one of the complainants, a member of the public.