

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 75/2025
[2026] NZSC 109**

BETWEEN

SAMANTHA JOYCE WOLFE,
CLIFFORD MORGAN ROYAL AND TE
TEPU O TE WAKAMINENGA O NGĀ
HAPŪ O NU TIRENI
Applicants

AND

GOVERNOR-GENERAL OF NEW
ZEALAND
First Respondent

AUCKLAND HIGH COURT
Second Respondent

MINISTER OF IMMIGRATION
Third Respondent

ASSOCIATE MINISTER OF
IMMIGRATION
Fourth Respondent

MINISTER OF FINANCE
Fifth Respondent

CHIEF EXECUTIVE OF THE MINISTRY
OF BUSINESS, INNOVATION AND
EMPLOYMENT
Sixth Respondent

COMMISSIONER OF POLICE
Seventh Respondent

CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Eighth Respondent

BRITISH HIGH COMMISSIONER TO
NEW ZEALAND
Ninth Respondent

Hearing: 7 May 2026

Court: Winkelmann CJ, Ellen France, Williams, Kós and Cooke JJ

Counsel: Applicants in person
N M Pender and A W M Britton for Respondent
M S Smith KC as counsel assisting the Court

Judgment: 17 August 2026

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The first to eighth respondents must pay the applicants one set of costs of \$1000.**
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REASONS

[1] The applicants seek leave to appeal two decisions made in the High Court, the first by Lang J dismissing their challenge to the Registrar's decision not to accept certain documents for filing,¹ and the second by the Registrar to decline to accept further documents for filing.

[2] The procedural background as it relates to this Court is as follows. In April 2025, a Deputy Registrar of the Supreme Court declined to accept the application for leave to appeal for filing on the basis that the Supreme Court had no jurisdiction to consider it. The applicants then applied for review of the Deputy Registrar's decision. By judgment dated 18 July 2025, Ellen France J allowed the application for review, and directed that the question of the Court's jurisdiction in relation to the application was to be addressed by the Court, if necessary, as part of determination of the application for leave to appeal.² The Court then convened an oral hearing to consider the Court's jurisdiction to hear and determine the proposed appeal from the decision of Lang J.

¹ *Te Tepu o Te Runanga o Te Wakaminenga o Ngā Hapū o Nu Tireni v Associate Minister of Immigration* HC Whangārei CIV-2024-404-1917, 13 August 2024 [First HC decision].

² *Wolfe v Governor-General of New Zealand* [2025] NZSC 85 (Ellen France J) [SC review judgment] at [13]. The application for review was however dismissed insofar as it related to the decision of the Deputy Registrar to reject for filing an earlier application for leave to appeal received 22 November 2024: at [12].

[3] The Court heard submissions from Mr Royal, speaking on behalf of the applicants generally.³ Ms Wolfe attended the hearing remotely. Submissions were also provided by Ms Pender for the Crown, and by Mr Smith KC, who had been appointed as counsel assisting.

Background

[4] Ms Wolfe is not a citizen or permanent resident of New Zealand. In October 2019, Ms Wolfe travelled to New Zealand under a valid working holiday visa. In late 2023, after that visa had expired and following instructions from the authorities to depart New Zealand, she applied to the Minister of Immigration (the Minister) for a special visa under s 61 of the Immigration Act 2009. Her request was declined in May 2024.

[5] On 18 June 2024, Mr Royal attempted to file a notice of appeal of this decision on behalf of the applicants in the Whangārei High Court. A Registrar declined to accept these documents for filing on the basis that there was no jurisdiction to appeal from the decision of the Minister to the High Court.

[6] In July 2024, Mr Royal then attempted to file a judicial review proceeding challenging the decision of the Registrar. This proceeding was referred to Lang J, who by minute dated 13 August 2024 indicated that he would deal with it as an application for review of the Registrar's decision in accordance with r 2.11(1)(b) of the High Court Rules 2016 (HCR).

[7] Lang J considered that the documents showed that the appellants were seeking to appeal against the decision of the Minister under s 61 of the Immigration Act. He then held:⁴

³ The applicants say that Ms Wolfe is regarded as whānau by Māori customary adoption or the institution of whāngai. Whether that is so, and the implications of this, do not need to be determined by us.

⁴ First HC decision, above n 1.

[3] Section 184 of the [Immigration] Act states that the purpose of part 7 of the Act is “to provide comprehensively for the system of appeal and review in respect of decision making under [the] Act”. The remaining sections in Part 7 then prescribe the rights of appeal and review that are available for decisions made under the Act. Importantly for present purposes, Part 7 does not contain any provision for a right of appeal or review in respect of a decision by the Minister under s 61 not to grant a visa in a special case. This is not surprising given that the Minister’s power under s 61 is expressly stated to be exercisable “of the Minister’s own volition”.⁵ Further, the power to grant a visa under s 61 is stated to be “in the Minister’s absolute discretion”.⁶

[4] This issue is obviously relevant to the correctness of the Registrar’s decision to refuse to accept the documents for filing. The Registrar was correct to decline to accept the appellants’ documents for filing if they were intended to constitute an appeal against a decision by the Minister under s 61. If the appellants seek to appeal against some other decision, they will need to re-file their documents specifying the decision against which they seek to appeal.

[8] On 14 October 2024, Immigration New Zealand officers detained Ms Wolfe. On 18 October, Mr Royal attempted to file a second appeal at the High Court, but this was not accepted for filing by the Registrar for a number of reasons, including because there is no jurisdiction to hear appeals against decisions made by the Minister under s 61 of the Immigration Act.

[9] On 21 October 2024, Mr Royal then sought to file a writ of habeas corpus on behalf of Ms Wolfe. This was again not accepted for filing by a Registrar. Mr Royal then sought a review of the Registrar’s decision by a Judge. By judgment dated 30 October 2024, that review application was dismissed by O’Gorman J who, after reviewing the law relating to authority to act, found that Mr Royal had no authority to initiate proceedings on Ms Wolfe’s behalf.⁷ O’Gorman J held:⁸

[21] On the facts, the Registrar did not make any error in refusing to accept the Habeas Corpus Writ for filing.

[22] Ms Wolfe has standing to make such an application, but she did not make the application acting in person, nor was it made by any qualified lawyer instructed to take such a step on her behalf. Rather, the person filing the document (who is not a lawyer) has purported to undertake this “reserved work” in breach of s 24 of the Lawyers and Conveyancers Act [2006], without seeking or obtaining any exemption from this Court to do so.

⁵ Immigration Act 2009, s 61(1).

⁶ Section 61(2).

⁷ *Wolfe v Department of Corrections* [2024] NZHC 3163 at [14]–[23] and [27].

⁸ Footnote omitted.

[23] Even if such an exemption had been sought in advance, I would not have considered it appropriate to grant an exception in this case. This would undermine the policy reasons for lawyers doing that reserved work, without any good reason put forward for Ms Wolfe not having instructed legal representation before now, and in circumstances where there is no apparent illegality given the Minister’s absolute discretion to make the decision under s 61 of the Immigration Act.

[24] In any event, I understand that the habeas corpus issues are now moot because Ms Wolfe has been deported and is no longer in the country. Accordingly, this Court has no jurisdiction to order her detention or otherwise outside of the jurisdiction, and in any event I would assume she is no longer detained.

[10] O’Gorman J also made an order on her own motion under r 15.1 of the HCR striking out the habeas corpus proceeding, to the extent that the application for review purported to be a wider application for judicial review or interim relief.⁹ In the meantime, the Registrar had rejected Mr Royal’s request to reconsider the 18 October refusal to accept the notice of appeal for filing in light of his application for habeas corpus. Then, on 24 October 2024, Ms Wolfe was deported.

[11] On 22 November 2024, Mr Royal filed an application for leave in this Court. This was not accepted for filing because it did not comply with the formal requirements for doing so.¹⁰

[12] The applicants’ second notice of application for leave, dated 14 March 2025, was not accepted for filing by the Deputy Registrar but, as noted above, following a review it was set down for determination by the Court.¹¹ This application relates to two decisions—Lang J’s decision of 13 August 2024, and the decision of the High Court Registrar dated 18 October 2024.

Assessment

[13] Whilst the argument before us focused on the jurisdiction of the Supreme Court to consider the application for leave to appeal, we consider that it also raises an important issue relating to the powers of registrars and judges of the High Court to

⁹ At [26].

¹⁰ See SC review judgment, above n 2, at [4].

¹¹ Above at [2].

decline to accept proceedings for filing in that Court. We address this issue first as it is relevant to the application for leave to appeal to this Court.

Ability to reject proceedings for filing in the High Court

[14] Access to the court is a fundamental right. It is an important component of the rule of law.¹² The importance of the right is reflected in s 27(3) of the New Zealand Bill of Rights Act 1990 (Bill of Rights) when the proposed respondent is the Crown or a public authority. But the right of access to the court is not unlimited. The interests of opposing parties to the proceedings, and of the public more generally in the fair administration of justice, are relevant. If the finite resources of the court are diverted to proceedings that abuse the court's processes, the ability to provide timely justice to other litigants is impacted.¹³ Limiting the right of access to the court can accordingly, in some circumstances, be demonstrably justified in a free and democratic society in accordance with s 5 of the Bill of Rights.

[15] These competing considerations are reflected in the rules of court regulating when registrars may decline to accept a proceeding for filing. There are certain formal requirements for the filing of proceedings.¹⁴ Under r 5.2(1) of the HCR, documents not complying with those requirements may be received for filing only with leave of a judge or registrar.¹⁵

[16] There are High Court cases in which it has been said that registrars have an inherent power to decline to accept plainly abusive proceedings for filing.¹⁶ However, it has also been held that this power does not extend to declining to accept

¹² *Regina (UNISON) v Lord Chancellor (Nos 1 and 2)* [2017] UKSC 51, [2020] AC 869 at [66]–[85].

¹³ See *Duncan v The Royal New Zealand Society for the Prevention of Cruelty to Animals Inc* [2024] NZCA 628 at [25].

¹⁴ See High Court Rules 2016, rr 5.3–5.16.

¹⁵ There is a similar rule in the District Court: District Court Rules 2014, r 5.5(1).

¹⁶ *Muir v Commissioner of Inland Revenue* [2017] NZHC 2082 at [17]; and *Wilson v Oranga Tamariki—Ministry for Children* [2025] NZHC 3278 at [10]. Te Aka Matua o te Ture | Law Commission has expressed the view that the High Court does not have inherent jurisdiction to decline to accept a proceeding for filing on the basis it is an abuse of process: Te Aka Matua o te Ture | Law Commission *Review of the Judicature Act 1908: towards a consolidated Courts Act* (NZLC IP29, 2012) at [16.2].

proceedings the legitimacy of which may be challenged, but which are not plainly abusive.¹⁷

[17] Any such inherent power can be excluded by rules of court that cover the field.¹⁸ Such rules have been promulgated in relation to the registrar's ability to decline to accept proceedings for filing. The position was reviewed by the Rules Committee | Te Komiti mō ngā Tikanga Kooti in early 2015 and, in December 2015, the Committee commenced consultation on new rules to address this. In its consultation document on the power to strike out statements of claim before service, the Committee considered the approaches of other comparable jurisdictions,¹⁹ and proposed a draft rule, indicating:

21. The proposed rule provides the ability for a Registrar to refer a statement of claim to a Judge if the Registrar believes that the claim may fall within one of the grounds specified for striking out the claim in r 15.1. The Registrar must accept the document for filing if it meets the formal requirements in the HCR but may decline to endorse the statement of proceeding for service and refer the statement of claim to a Judge.
22. Where a statement of claim is referred to the Judge, the Judge may, on his or her own initiative, order that the statement of claim is disposed of or, as the case may be proceeds in a way that complies with the Rules. ...
23. The rule also provides that the Judge must inform the claimant of their right to appeal.

[18] Rule 15.1 relevantly provides:

- (1) The court may strike out all or part of a pleading if it—
 - (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of the process of the court.

¹⁷ See *Fuimaono v Housing New Zealand Ltd* (2000) 15 PRNZ 115 (HC) at [7], where the Court determined that the Registrar was wrong to decline to accept an appeal for filing on the ground that it was filed out of time.

¹⁸ See *DFT v JDN* [2023] NZCA 15, [2023] NZAR 69 at [68]–[85].

¹⁹ Rules Committee | Te Komiti mō ngā Tikanga Kooti *Consultation on Striking Out Statements of Claim Before Service* (4 December 2015) at [13]–[19].

[19] Two significant changes were made to the Committee’s proposed rule before it was promulgated as rr 5.35A–5.35C of the HCR.²⁰ First, the rule was extended to cover all proceedings and not just those commenced by statement of claim.²¹ Secondly, the cross-reference to r 15.1 was removed,²² with r 5.35A as enacted more simply referring to a proceeding that is plainly an abuse of process.

[20] As promulgated, r 5.35A provided:

5.35A Registrar may refer plainly abusive proceeding to Judge before service

- (1) This rule applies if a Registrar believes that, on the face of a proceeding tendered for filing, the proceeding is plainly an abuse of the process of the court.
- (2) The Registrar must accept the proceeding for filing if it meets the formal requirements for documents set out in rules 5.3 to 5.16.
- (3) However, the Registrar may,—
 - (a) as soon as practicable after accepting the proceeding for filing, refer it to a Judge for consideration under rule 5.35B; and
 - (b) until a Judge has considered the proceeding under that rule, decline to sign and release the notice of proceeding and attached memorandum for the plaintiff or the applicant (as appropriate) to serve the proceeding.

[21] Rule 5.35B then empowered a judge to strike out or stay a proceeding referred to them under r 5.35A, or make other orders, if satisfied the proceeding was plainly an abuse of the process of the court.

[22] Rule 5.35A(2) required the Registrar in this case to accept the proceedings presented for filing if the formal requirements in the HCR were satisfied. The position is different in the Court of Appeal and Supreme Court. Rule 5A of the Supreme Court Rules 2004 provides:

²⁰ No such rules were introduced into the District Court Rules.

²¹ Rules Committee | Te Komiti mō ngā Tikanga Kooti *Minutes of meeting held on 28 November 2016* (2 December 2016) at 2.

²² Rules Committee | Te Komiti mō ngā Tikanga Kooti *Minutes of meeting held on 3 October 2016* (14 November 2016) at 3.

5A Registrar's powers

- (1) The Registrar may, unless otherwise directed by a Judge,—
- ...
- (b) decline to accept a document for filing—
- (i) that contains plainly abusive material unless that material is removed:
- (ii) if the Court lacks jurisdiction in the matter to which the document relates:
- ...

This is in the same terms as r 5A of the Court of Appeal (Civil) Rules 2005.

[23] There is no provision in the HCR empowering a registrar to decline to accept proceedings for filing for lack of jurisdiction. Proceedings may be initiated in the High Court, whereas the Court of Appeal and Supreme Court only have statutory appeal jurisdiction. It is in the High Court and District Court, as the initiating courts of general jurisdiction, where the right of access to the court particularly manifests.

[24] Rule 5.35A applied to the applicants' proceedings notwithstanding that the applicants sought to file an appeal. Part 5 of the HCR contains rules of general application that apply unless displaced by more specific rules, such as those in pt 20 relating to appeals.²³ The definition of "proceeding" in r 1.3(1) is broad, covering "any application to the court for the exercise of [its] civil jurisdiction ... other than an interlocutory application". This definition includes an appeal. The minutes of the Rules Committee prior to the promulgation of r 5.35A also record an intention to broaden the coverage of the rule beyond proceedings commenced by statement of claim, albeit with a focus on originating applications under pt 19.²⁴

[25] We accordingly consider that r 5.35A(2) obliged the Registrar to accept the applicants' notices of appeal against the Minister's decision for filing notwithstanding that a jurisdictional issue arose. It is not suggested that the proceedings were plainly

²³ See Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at [HR20.1.03]. Section 8(2) of the Judicial Review Procedure Act 2016 expressly applies pt 5 to judicial review proceedings.

²⁴ Rules Committee, above n 21, at 2.

abusive in the sense contemplated by rr 5.35A–5.35B. As to that, we endorse the following comment of the Court of Appeal in *Te Wakaminenga o Ngā Hapū Ki Waitangi v Waitangi National Trust Board*:²⁵

[15] The power under r 5.35B must be exercised sparingly, and only in the clearest of cases. Given that the rule contemplates a litigant being denied the fundamental right of access to the courts, with the possibility of the proceeding being halted before it is even served, the abuse must be clear beyond doubt from reading the claim.

[26] The Court of Appeal also noted that the draft rules were amended before their promulgation to remove the reference to the jurisdiction to strike out proceedings under r 15.1(1). We agree with the Court of Appeal that rr 15.1 and 5.35A–5.35C “serve different functions”, and “a misconceived or legally untenable [proceeding] ... which may be struck out under r 15.1 is not, in and of itself, abusive for the purposes of r 5.35B”.²⁶

[27] In both of the decisions appealed against here, one of the reasons given as to why the Registrar declined to accept the proceedings for filing was that there was no right of appeal against a decision made under s 61 of the Immigration Act. Refusing to accept the proceedings for filing on that basis was inconsistent with the duty in r 5.35A of the HCR to accept proceedings for filing which meet the requirements as to form. Were there issues as to form in the applicants’ documentation, these would have been able to be remedied.

[28] For these reasons, the Registrar erred in declining to accept the applicants’ proceedings for filing, and Lang J erred in upholding the Registrar’s decision.

[29] This case demonstrates the risks involved in rejecting a litigant at the counter, thus depriving them of the right of access to the court, without any hearing or the involvement of the opposing parties. While it is true that there is no statutory right to appeal against a decision of the Minister under s 61 of the Immigration Act, it has been recognised that such decisions can be challenged by way of judicial review.²⁷ To the

²⁵ *Te Wakaminenga o Ngā Hapū Ki Waitangi v Waitangi National Trust Board* [2023] NZCA 63, [2023] NZAR 180.

²⁶ At [13].

²⁷ See *Zhang v Associate Minister of Immigration* [2016] NZCA 361, [2016] NZAR 1222.

extent that Lang J suggested otherwise, this was incorrect. Given the power of the court to treat a proceeding challenging such a decision as an application for judicial review,²⁸ we consider that this course should have been followed. Significant individual rights were engaged—the proceedings sought to prevent a deportation, and the later proceeding involved a challenge to an arrest prior to deportation. Moreover, the proceedings were being commenced by litigants in person with less familiarity with the different forms of legal challenge.

[30] Similarly, O’Gorman J’s subsequent decision, which held that the proceedings seeking habeas corpus were rightly rejected for filing because Mr Royal had no authority to commence proceedings on Ms Wolfe’s behalf, did not recognise authorities that have held that parties can initiate habeas corpus applications on behalf of a detained person when it is not practicable for the detained person to do so.²⁹ We consider that the proceedings should have been accepted for filing and then addressed in the normal way.

[31] We note that since these decisions were made, rr 5.35A–5.35C of the HCR have been revoked and replaced by ss 164A–164C of the Senior Courts Act 2016.³⁰ With some exceptions, the new statutory provisions are of similar scope to the former rules but have been extended so that they also apply to proceedings filed in the Court of Appeal and Supreme Court. They also, in s 164C, include a provision automatically restraining a litigant from commencing or continuing civil proceedings without leave of the High Court if they have had proceedings struck out under these provisions on more than one occasion over a two-year period. As a consequence of these changes, there is no longer a rule in the HCR that expressly provides that a registrar of the High Court must accept a proceeding for filing if all formal requirements are met. This is explicable given the new statutory provisions apply across all three Courts and, as noted above, registrars have powers to decline or accept proceedings for filing for want of jurisdiction in both the Court of Appeal and Supreme Court. But we do not consider that these changes were intended to establish

²⁸ See Judicial Review Procedure Act 2016, s 12.

²⁹ *Ponsonby Chambers v New Zealand Police* [2024] NZCA 524 at [14]; and *Re Winara Parata* (1880) 1 OB & F 31 (SC).

³⁰ Judicature (Timeliness) Legislation Amendment Act 2025, ss 7 and 28. See also *Donellan v Attorney-General* [2026] NZSC 110 at [6]–[10].

a similar jurisdiction exercisable by a registrar of the High Court. As we have addressed above, any inherent power to decline to accept a proceeding for filing in the High Court was limited to proceedings that were an abuse of process, a position now regulated by ss 164A–164C. We also consider that any reconsideration of a broader power to decline to accept proceedings for filing is best addressed by the Rules Committee, given the Committee’s role and its earlier decisions on this issue.

Jurisdiction of the Supreme Court

[32] The application for leave to appeal to this Court must be considered against the background addressed above. Two issues have been raised in relation to the jurisdiction of this Court to consider the applicants’ application for leave to appeal.

[33] The first issue is whether the applicants are “[parties] to a civil proceeding” for the purposes of s 69 of the Senior Courts Act. In *Fehling v West Coast District Health Board*, this Court held that a decision not to accept a proceeding for filing in the High Court meant that there were no “proceedings” in the High Court, and no jurisdiction in this Court as a consequence.³¹ This is not the case here, however. We accept Mr Smith’s argument that there was a requirement to accept the applicants’ proceedings for filing in the High Court. By contrast, this Court advised the applicant in *Fehling* to file new documents in the High Court “in a manner that did not abuse the Court’s process”.³² In this case, the applicants’ proceedings were considered by High Court Judges on two occasions, with decisions issued. In these circumstances, we consider that there were decisions “made in the [proceedings]” which can be the subject of an application for leave under s 69.

[34] We received extensive submissions on the second issue—whether the decisions can be categorised under s 69(c) as having been “made on an interlocutory application”, therefore precluding this Court’s jurisdiction. Apart from noting that a purposive interpretation is appropriate, and that “interlocutory application” is defined in a materially different way in pt 4 of the Senior Courts Act than in other contexts, we do not consider it necessary to address those arguments. We are satisfied that the

³¹ *Fehling v West Coast District Health Board* [2016] NZSC 155 at [3].

³² At [3]. Decisions of this kind would now be made under ss 164A–164B of the Senior Courts Act 2016: see above at [31].

decisions that the applicants wish to appeal include decisions that were not made on interlocutory application. The decision of the Registrar not to accept the applicants' second set of proceedings for filing was clearly not made on interlocutory application. And the first decision of Lang J was not made on an interlocutory application by the applicants—rather, Lang J (rightly) treated the applicants' judicial review proceeding as an application to review the decision of the Registrar. It may be that under r 2.11(1)(b) of the HCR such reviews are commenced by interlocutory application. But the fact that the Judge treated it as an application for a review does not necessarily mean that this was a decision actually made on an interlocutory application.

[35] For these reasons, we accept that the Court has jurisdiction to consider the applicants' application for leave in accordance with s 69 of the Senior Courts Act.

Should leave be granted?

[36] We now address the application for leave on its merits. Under s 74 of the Senior Courts Act, leave can only be granted if it is necessary in the interests of justice for the Court to hear and determine the proposed appeal, including if the proposed appeal involves a matter of general or public importance.³³ Moreover, under s 75, this Court must not grant leave directly from a decision of the High Court unless it is necessary in the interests of justice under s 74, and there are exceptional circumstances that justify taking the proposed appeal directly to this Court.

[37] We are satisfied that the application does not meet these thresholds. In the normal course, this would have been an appropriate case to be addressed by the Court of Appeal under the right of appeal in s 56(4) of the Senior Courts Act rather than on direct appeal to this Court. The exceptional circumstances required by s 75(b) do not exist. But in any event, there is a further consideration that means that the appropriate way forward does not involve the pursuit of an appeal to either Court.

[38] As we have said above, the applicants' proceedings should have been accepted for filing, treated as an application for judicial review of the Minister's decision under s 61 of the Immigration Act, and dealt with in the normal way. The fact that this has

³³ Section 74(1) and (2)(a).

not occurred does not prevent the applicants filing a further judicial review proceeding challenging the Minister's decision. Provided the formalities for filing a proceeding are satisfied, such a proceeding should be dealt with on its merits. There is no need for the applicants to pursue an appeal in the Court of Appeal. Nor is there any point in pursuing such an appeal—the only remedy the Court would likely grant would be an order requiring the proceeding to be dealt with on its merits in the High Court. The more appropriate course is for the applicants to file a new proceeding. In all the circumstances, we would expect the High Court to afford the allocation of a hearing for that proceeding some priority.

[39] Mr Royal suggested to us that the Court should both grant leave to appeal and address the substance of the applicants' claim. As we explained at the hearing, that is not possible. The Minister has not filed a defence, nor any other materials in opposition that would enable the Court to address the application on its merits. In any event, the proceedings should be dealt with in the High Court in the usual way.

[40] For these reasons, the application for leave to appeal is dismissed. But we do so in the expectation that the applicants will be permitted to file a further proceeding in the High Court challenging the Minister's decision which will be addressed on its merits.³⁴

[41] We also consider that, given the errors made in the High Court which deprived the applicants of their right of access to the court, in the exceptional circumstances of the case they should receive an award of costs in this Court. Using the daily recovery rates in the HCR for litigants in person as a guide, we award the applicants \$1,000 in costs.

³⁴ Ms Pender rightly pointed out that an extension of time will be required in respect of any application for judicial review of the Minister's decision: Immigration Act, s 247(1)(a). Given the result we have reached, we expect the High Court would grant such an extension. It was not suggested that ss 186(3)(a) or 187(8)(a) would apply, presumably because Ms Wolfe was in New Zealand at the time.

Result

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

[43] The first to eighth respondents must pay the applicants one set of costs of \$1,000.

Solicitors:

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