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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 58/2026
[2026] NZSC 134**

RE M (SC 58/2026)
Applicant

Counsel: Applicant in person

Judgment: 17 September 2026

JUDGMENT OF WILLIAMS J

The Registrar is to set a timetable for submissions.

REASONS

[1] Ms M has filed an application for leave to appeal to this Court. The Registrar accepted the proceeding for filing but referred it to me pursuant to s 164A of the Senior Courts Act 2016 on the basis that it seemed to be plainly an abuse of this Court's process.

[2] For the following reasons, I am satisfied the proceeding is not plainly an abuse of process.

Background

[3] Ms M filed a judicial review proceeding against the respondents in the High Court. The proceeding challenged matters relating to the medical care of Ms M's children. It was struck out by the High Court prior to service for disclosing no

reasonably arguable cause of action.¹ The Court of Appeal then struck out Ms M's appeal from that judgment, on the basis of a continuing pattern of non-compliance with procedural directions and delay in prosecuting the appeal.² Since filing her appeal, Ms M had made three applications in relation to security for costs, requested two extensions of time to file the case on appeal and applied to review registrar decisions to refuse to extend time to pay security for costs. Her filings were well over the applicable page limits.³ It was also relevant that Ms M's notice of appeal disclosed no real error in the High Court's decision but instead rehashed arguments made there in respect of the systems at issue.⁴

[4] Ms M then filed an application for leave to appeal to this Court. The Registrar considered the proceeding appeared to be an abuse of process because it continued the pattern set in the lower Courts of excessive documentation. Ms M's notice of application is 43 pages long and, in the Registrar's view, does not raise any real error in the Court of Appeal's judgment but rather simply argues its factual findings.

Assessment

[5] Kós J's judgment in *Donellan v Attorney-General* recently established the appropriate approach when a referral is made pursuant to s 164A in this Court.⁵ The referral is to be considered by a single judge. The judge is first to consider whether further submissions are needed to fairly determine whether the proceeding is plainly an abuse of process. The judge is then to consider whether the proceeding is plainly an abuse of process and, if so, what orders or directions should be made.⁶

Further submissions?

[6] I am satisfied further submissions to fairly determine whether the proceeding is plainly an abuse of process are not required. Ms M has filed a notice of application that runs to 43 pages. She has also separately filed an application seeking a stay of costs awarded in the lower Courts, together with an accompanying memorandum and

¹ [M] v *Health New Zealand* [2025] NZHC 115 (Blanchard J).

² [M] v *Health New Zealand* [2026] NZCA 230 (Courtney and Palmer JJ).

³ At [6].

⁴ At [7].

⁵ *Donellan v Attorney-General* [2026] NZSC 110.

⁶ At [14].

an affidavit with lengthy exhibits. These materials are sufficient to ground a determination as to whether the proceeding is plainly an abuse of process.

Is the proceeding plainly an abuse of process?

[7] I have concluded that the proceeding is not plainly an abuse of the Court's process. The fundamental basis of the proposed appeal is coherent: Ms M says the Court of Appeal erred in striking out her appeal in circumstances where it was procedurally deficient, because those deficiencies were remediable. The fact that this argument appears to challenge the Court of Appeal's factual findings might be relevant to the leave panel's determination but is not itself sufficient for a finding of abusiveness.

[8] I similarly do not consider the length of Ms M's notice of application forms a legitimate basis for a finding of abusiveness. It is unusually lengthy, but the Supreme Court Rules 2004 do not impose a page limit on notices of application. Unlike the position in the Court of Appeal, Ms M has not breached any procedural rules in this Court.

[9] The Registrar is therefore to set a timetable for submissions. The Registrar is also to draw Ms M's attention to the procedural rules applicable in that respect, including in relation to page length.