

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 30/2026
[2026] NZSC 141

BETWEEN

GILLIAN JANE GATFIELD
First Applicant

EMMA JACQUELINE PEARSON
Second Applicant

AND

ANNE ELIZABETH HINTON AS
EXECUTOR AND TRUSTEE OF THE
ESTATES OF JACQUELINE MARY
GATFIELD AND KENNETH MILES
GATFIELD
Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: M K Mahuika and M A Jeffries for Applicants
A S Butler KC for Respondent
A H Waalkens KC for Interested Parties

Judgment: 2 October 2026

JUDGMENT OF THE COURT

A The application for recall of this Court’s judgment of 22 May 2026 (*Gatfield v Hinton* [2026] NZSC 60) is dismissed.

B The applicants must pay the respondent and the interested parties one set of costs of \$4,850.

REASONS

Introduction

[1] The applicants seek recall of this Court’s judgment of 22 May 2026¹ dismissing

¹ *Gatfield v Hinton* [2026] NZSC 60 (Ellen France, Williams and Kós JJ) [SC leave judgment].

their application for leave to appeal from a decision of the Court of Appeal.² The Court of Appeal upheld a decision of Associate Judge Lester making orders that proceedings brought by the applicants in relation to a family trust be referred to mediation and, in the event that did not resolve matters, to arbitration.³

Background

[2] The background is set out in the decision declining leave.⁴ The applicants' challenge is to a decision that a dispute over the disposition of a family bach is to be referred to an alternative dispute resolution process as provided for under s 145 of the Trusts Act 2019. The application for leave to appeal was dismissed on the basis the present case has insufficient prospects of success. The Court was of the view that, in essence, the applicants had not raised anything suggesting that the Court of Appeal erred in its assessment, which followed a careful analysis of the statutory scheme.

The application for recall

[3] In seeking a recall, the applicants say that the judgment declining leave has not provided adequate reasons and does not engage with the grounds of leave advanced. In particular, the contention is that the Court needed to address the constitutional framework advanced by the applicants. In developing the submissions in support of the recall application, the applicants say, among other matters, that the Court needed to address the various aspects of open justice they say are raised by the application for leave. Those aspects include the respondent's judicial status, the right to freedom of expression, the right to a public trial and the implications of the New Zealand Bill of Rights Act 1990.

[4] In addition, the applicants say, first, contrary to what is said in the leave judgment, they do pursue the question of the powers of the Associate Judge to have determined the matter. They refer in that respect to the judgment in *Reihana v Judicial Conduct Commissioner*,⁵ which they say is a recent decision of high relevance.⁶

² *Gatfield v Hinton* [2026] NZCA 17, (2026) 6 NZTR ¶36-001 (Cooke, Harland and Cull JJ).

³ *Gatfield v Hinton* [2024] NZHC 1712, (2024) 6 NZTR ¶34-018.

⁴ SC leave judgment, above n 1, at [2]–[6].

⁵ *Reihana v Judicial Conduct Commissioner* [2026] NZCA 76, (2026) 27 PRNZ 37.

⁶ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

[5] Second, the applicants make something of the use of the word “refer” in s 148 of the Trusts Act — a provision which was not brought to the Court’s attention. In particular, they submit that a comparison can be drawn between the use of the word “refer” in s 148 and the use of the word “submit” in s 145(1)(b). Third, they contend that counsel did not direct the Court to s 10(1) of the Arbitration Act 1996, which states that a matter the parties have agreed to submit to arbitration is not arbitrable if the arbitration agreement is contrary to public policy. Finally, the applicants submit that the Court did not address their appeal against costs in the Court of Appeal.

[6] The applicants argue that the matters raised comprise very special reasons justifying recall; there is a new decision of high relevance; and plainly relevant statutory provisions were not brought to this Court’s attention.⁷

[7] To the extent that the application relies on the adequacy of the reasons given, we reject that as a basis for recall. The Court is of course required to state its reasons for refusing to give leave.⁸ However, reasons may be stated “briefly” and “in general terms only”.⁹ It is not therefore inappropriate for the Court to focus on what it considers is the gravamen of the application for leave. In this case, as the references in the leave judgment to the “constitutional rights” raised by the applicants and to their reliance on treatment of the respondent’s then-judicial status make clear, the Court did consider the issues raised by the applicants falling under this head.¹⁰

[8] The leave judgment also acknowledged that the issues raised by the scope of s 145 and its application may raise questions of general or public importance in terms of s 74(2)(a) of the Senior Courts Act 2016. But we considered, as the leave judgment states, that nothing raised called into question the Court of Appeal’s assessment of the exercise of the statutory power in issue. No disrespect to the arguments raised by the applicants was intended by addressing these matters briefly and in general terms. But in our view, none of those arguments raised a sufficiently arguable case, meaning that it was not in the interests of justice for the Court to hear the proposed appeal.¹¹

⁷ *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2] citing *Horowhenua*, above n 6.

⁸ Senior Courts Act 2016, s 77.

⁹ Section 77(2)(a) and (b).

¹⁰ SC leave judgment, above n 2, at [7].

¹¹ Senior Courts Act, s 74(2).

The applicants' arguments on these matters are in essence an attempt to relitigate this earlier decision. That does not provide a basis for recall.

[9] For completeness, we note that the issue of the powers of the Associate Judge was not expressly referred to in the application for leave. But, in any event, we can clarify we had not seen any issue with the Court of Appeal's analysis of that point either. We agree with the submission for the respondent that *Reihana* does not alter the picture in any substantive way, given what was in issue in that case.

[10] Nor do we see anything turning on the wording difference between ss 145 and 148 when those sections are read in their context. The same observation applies to the reliance on s 10(1). In any event, as the respondent points out, the arbitration here has been ordered by the High Court under s 145. No question of an agreement contrary to public policy arises.

[11] Finally, given the insufficient prospects of success of the proposed appeal, we do not see the omission to address the question of costs in the Court of Appeal as sufficient to comprise a very special reason or a reason for which justice requires recall.¹² We record the respondent's submission that the applicants have raised the calculation of costs directly with the Court of Appeal seeking only that the costs payable to the interested parties on a band B basis be reduced in relation to one item from \$14,340 to \$2,930.

Costs on the present application

[12] The applicants say that no costs award should be made in relation to the present application on the basis that they are carrying the burden of clarifying constitutional rights and court powers on unique issues of great public interest and importance. However, the application for recall having been unsuccessful and the respondent and the interested parties having been put to the cost of filing submissions, we are not persuaded there is any basis for costs not following the event in the usual way.

¹² *Saxmere*, above n 7, at [2] citing *Horowhenua*, above n 6. The question of costs was referred to in the leave application but not addressed in submissions.

Result

[13] The application for recall of this Court's judgment of 22 May 2026 (*Gatfield v Hinton* [2026] NZSC 60) is dismissed.

[14] The applicants must pay the respondent and the interested parties one set of costs of \$4,850.

Solicitors:

M A Jeffries, Auckland for Applicants

Simpson Grierson, Auckland for Respondent and Interested Parties