

IN THE SUPREME COURT OF NEW ZEALAND

SC 65/2014  
[2014] NZSC 133

BETWEEN                      EVGENY ORLOV  
   Applicant

AND                              THE NATIONAL STANDARDS  
   COMMITTEE 1  
   Respondent

Court:                          William Young, Arnold and O'Regan JJ

Counsel:                      Applicant in person  
   W C Pyke for Respondent

Judgment:                      26 September 2014

---

JUDGMENT OF THE COURT

---

- A      The application for leave to appeal is dismissed.**
- B      The applicant must pay costs of \$2,500 to the respondent,  
         plus reasonable disbursements.**
- 

REASONS

[1]      The applicant, Mr Orlov, is a litigation lawyer. As a result of disciplinary proceedings brought against him by the National Standards Committee of the New Zealand Law Society (the Committee), he was struck off by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal). The five charges on which Mr Orlov was found guilty related principally to statements he made about a High Court Judge in various contexts, which the Tribunal found to be false or made without sufficient justification and of a nature that meant Mr Orlov was not a fit and proper person to be a lawyer.<sup>1</sup>

---

<sup>1</sup>      *National Standards Committee v Orlov* [2013] NZLCDT 45 (liability decision); *National Standards Committee v Orlov* [2013] NZLCDT 52 (penalty decision).

[2] Mr Orlov appealed to the High Court against the Tribunal’s decision and also issued judicial review proceedings (we will refer to these together as “the appeal”). For the purpose of the appeal, Mr Orlov retained a close associate, Mr Deliu, to represent him as counsel. The Committee applied for an order that Mr Deliu be debarred from appearing as Mr Orlov’s counsel, on the grounds that Mr Deliu faced similar charges to those faced by Mr Orlov in respect of the same Judge, that he had given evidence (by way of affidavit) in Mr Orlov’s disciplinary proceedings and that the Tribunal had debarred him from acting in the proceedings before it.

[3] Fogarty J granted the Committee’s application, and appointed an amicus curiae in respect of the appeal.<sup>2</sup> The Judge later recused himself from hearing the appeal. Mr Orlov appealed to the Court of Appeal against Fogarty J’s decision debarring Mr Deliu from appearing, but was unsuccessful.<sup>3</sup> He now seeks leave to appeal to this Court.

[4] Mr Orlov advances four grounds of appeal, namely that the Court of Appeal erred in:

- (a) upholding the decision of the High Court to debar Mr Deliu from acting;
- (b) refusing to allow Mr Orlov to take his own recording of the appeal hearing;
- (c) not quashing the decision of the High Court to debar Mr Deliu from acting given that the Judge had later recused himself from hearing the appeal; and
- (d) giving directions as to how the amicus should perform his duties.

[5] Mr Pyke for the Committee submits that there is no jurisdiction for an appeal to this Court because s 254(4) of the Lawyers and Conveyancers Act 2006 provides

---

<sup>2</sup> *Orlov v National Standards Committee No 1* [2014] NZHC 257. The Judge noted that Mr Orlov could choose to instruct the amicus as his counsel: at [25].

<sup>3</sup> *Orlov v National Standards Committee No 1* [2014] NZCA 242.

that the decision of the Court of Appeal on any appeal under the Act is final. Mr Pyke submits that the High Court's order that Mr Deliu was debarred from appearing was made in the Court's inherent jurisdiction and was a "determination of the High Court in the proceedings" in terms of s 254(1). A possible difficulty with this analysis is that Mr Orlov's proceedings did not involve simply an appeal against the Tribunal's decision but also an application for judicial review. It is unlikely that the latter would be caught by s 254(1).

[6] In any event, on the assumption that there is jurisdiction, we are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal.

- (a) As to the ground in [4](a), the Court of Appeal observed that the principles concerning the removal of counsel were not in dispute; what was at issue was the way that they were to be applied in the present case.<sup>4</sup> We agree with that observation. Consequently, there is no issue of general or public importance suitable for adjudication by this Court in relation to this ground.
- (b) The ground raised in [4](b) is a matter of case management for the Court of Appeal, especially in light of the fact that hearings in the Court of Appeal are recorded as a matter of course. This ground raises nothing of general or public importance.
- (c) Similarly, the ground raised in [4](d) is simply a matter of case management and raises nothing of general or public importance.
- (d) The ground raised in [4](c) does not meet the general or public importance test either. The test for recusal has been settled by this Court in the *Saxmere* litigation.<sup>5</sup> The fact that Fogarty J decided, after having given his decision in relation to Mr Deliu, that he should recuse himself from hearing the appeal does not mean that he should

---

<sup>4</sup> At [22].

<sup>5</sup> *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 122, [2010] 1 NZLR 76.

not have dealt with the Committee's application in relation to Mr Deliu.

[7] Moreover, we see no risk of a substantial miscarriage of justice. We note in this connection that Mr Orlov's appeal has now been determined. Although the Tribunal's findings against Mr Orlov were upheld, its order that he be struck off was quashed.<sup>6</sup>

[8] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500 plus reasonable disbursements.

Solicitors:  
New Zealand Law Society, Wellington for Respondent

---

<sup>6</sup> *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987.