

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 61/2024
[2024] NZSC 104

BETWEEN JEREMY JAMES MCGUIRE
Applicant

AND CENTRAL STANDARDS COMMITTEE 3
First Respondent

AND GENERAL STANDARDS COMMITTEE 1
Second Respondent

AND GENERAL STANDARDS COMMITTEE 3
Third Respondent

AND LEGAL COMPLAINTS REVIEW
OFFICER
Fourth Respondent

AND WELLINGTON STANDARDS
COMMITTEE 1
Fifth Respondent

AND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL
Sixth Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: R J Latton for Applicant
P N Collins for First, Second and Third Respondents

Judgment: 27 August 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay one set of costs of \$2,500 to the first, second, third and fifth respondents.**
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REASONS

Introduction

[1] Mr McGuire seeks leave to appeal against a decision of the Court of Appeal.¹ That Court had dismissed his appeal from a decision of the High Court, which had dismissed Mr McGuire's application for judicial review of actions by the respondent Standards Committees, and on review by the fourth respondent, the Legal Complaints Review Officer (LCRO).²

Background

[2] The application for leave to appeal seeks to challenge the findings of the Court of Appeal relating to the lodging of a caveat and the applicant's liability to refund part of fees paid to him. The full background is set out in the Court of Appeal judgment.³

[3] It suffices for the purposes of this application to note that the caveat in question was one lodged on behalf of a son aggrieved by his father's will (the complainant). Mr McGuire had successfully registered the caveat on the basis that the complainant had an equitable interest in a property under a constructive trust. Mr McGuire had the complainant sign an indemnity which recorded that he had been instructed to register a caveat and that the client indemnified Mr McGuire for any costs or damages.⁴ The complainant later brought a claim under the Family Protection Act 1955, through other solicitors. The caveat was ultimately withdrawn and the Family Protection Act proceedings were settled on the basis that the costs incurred by the counterparties related to the lodgement of the caveat would be paid by the complainant.

¹ *McGuire v Central Standards Committee 3* [2024] NZCA 165 (Wylie, Mander and Jagose JJ) [CA judgment].

² *McGuire v Central Standards Committee* [2023] NZHC 242, [2023] NZAR 134 (Palmer J).

³ CA judgment, above n 1, at [4]–[23]. The procedural history and a summary of the High Court judgment are set out at [24]–[29].

⁴ At [4]–[6].

[4] The refund issue arose because a fee charged by Mr McGuire for a conveyancing transaction exceeded the advertised fee on his website. After being contacted by the client, he had agreed to refund the difference but had failed to do so.⁵

Court of Appeal decision

[5] With regard to the caveat, the Court of Appeal noted that the relevant Standards Committee and the LCRO had relied on *Gordon v Treadwell Stacey Smith*,⁶ as to the appropriate steps a solicitor should take where they have doubts about whether there is a proper basis to lodge a caveat. Mr McGuire clearly had such doubts: he should have prepared the documentation for the complainant to lodge himself, whether or not he had an indemnity.⁷ There was no error in the High Court's decision declining to grant judicial review on this point.⁸

[6] With regard to the refund, Mr McGuire's argument before the Court of Appeal was that this should not have been dealt with by the relevant Standards Committee as it related to a relatively minor bill of costs: (Mr McGuire referred to Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, reg 29). The Court of Appeal rejected that argument, holding that the complaint was not about overcharging, but about the refusal to provide the promised refund. This meant that reg 29 did not apply.⁹

Our assessment

[7] This application relates to the particular circumstances of Mr McGuire's case. It therefore raises no point of general or public importance, or general commercial significance.¹⁰ Nor is there any risk of a miscarriage of justice.¹¹ Nothing raised by Mr McGuire suggests that the decision of the Court of Appeal may have been in error.

⁵ At [16]–[19].

⁶ *Gordon v Treadwell Stacey Smith* [1996] 3 NZLR 281 (CA).

⁷ CA judgment, above n 1, at [62].

⁸ At [63].

⁹ At [66]–[68].

¹⁰ Senior Courts Act 2016, s 74(2)(a) and (c).

¹¹ Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5] for what is required for there to be a miscarriage of justice in civil cases.

Result

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

[9] The applicant must pay one set of costs of \$2,500 to the first, second, third and fifth respondents.

Solicitors:

J J McGuire, Palmerston North for Applicant

K A Pludthura, New Zealand Law Society, Auckland for First, Second, Third and Fifth Respondents