

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 89/2023
[2024] NZSC 131

RE SANDY ZHUJUN DAI
Applicant

Counsel: Applicant in person

Judgment: 2 October 2024

JUDGMENT OF ELLEN FRANCE J

- A** The application for review of the decision of the Registrar declining to waive the filing fee is dismissed.
- B** The application for review of the decision of the Registrar to refuse to allow the second application for recall to proceed pending this review is dismissed.
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REASONS

Introduction

[1] The applicant, Sandy Dai, presented for filing what is described as an application for recall of this Court's decision in *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants*.¹ At the same time the applicant filed an application for a fee waiver. The Registrar declined the application for a fee waiver. She advised the applicant that the filing fee of \$520 was payable. Ms Dai then applied for a review of the Registrar's decision under s 160 of the Senior Courts Act 2016. That application has been referred to me for decision along with an

¹ *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2024] NZSC 109 (Glazebrook, Williams and Kós JJ) [recall judgment].

application for review of the decision of the Registrar declining to allow the second application for recall to proceed pending this review.

Background

[2] The background to the present application is set out in this Court’s judgment of 22 April 2024 which declined leave to appeal from various interlocutory decisions (the leave judgment).² The Court in the leave judgment explained the background in this way:³

... in May 2022 the Professional Conduct Committee (PCC) of the New Zealand Institute of Chartered Accountants decided to refer various complaints against Ms Dai to the Institute’s Disciplinary Tribunal. In November 2022, the Tribunal found Ms Dai guilty of misconduct, conduct unbecoming an accountant, and breaching the Institute’s Rules and Code of Ethics, with Ms Dai being struck off the Register of Members in January 2023.

[3] As the Court notes, Ms Dai filed proceedings in the High Court seeking judicial review of the PCC’s decision to refer the matter to the Institute’s Disciplinary Tribunal (the Tribunal). By the time that proceeding came before the High Court on a strike-out application brought by the PCC, the Tribunal had issued its decision. Ms Dai’s claim was struck out.⁴

[4] The leave judgment recorded that, in February 2023, Ms Dai filed an appeal in the Court of Appeal against the High Court’s strike-out decision. She also applied to waive the filing fee and dispense with security for costs. The latter two applications were declined by the Deputy Registrar and by the Court of Appeal on review⁵ as was her application to stay execution of the High Court costs judgment in relation to the strike-out.⁶ Ms Dai’s unsuccessful application for leave to appeal to this Court related to those decisions. The Court in the leave judgment also observed that Ms Dai failed

² *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2024] NZSC 38 (Glazebrook, Williams and Kós JJ) [leave judgment].

³ At [2].

⁴ *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2023] NZHC 4 (Churchman J).

⁵ *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2023] NZCA 132 (Brown and Collins JJ).

⁶ *Dai v Professional Conduct Committee of the New Zealand Institute of Chartered Accountants* [2023] NZHC 278 (Churchman J).

to file her case on appeal as directed, so the substantive appeal was deemed abandoned on 25 July 2023 in accordance with r 43 of the Court of Appeal (Civil) Rules 2005.

[5] In declining leave to appeal, the Court took the view that Ms Dai’s litigation had begun “on the wrong foot” and “continued in that fashion” to this Court.⁷ The Court said that while the notice of application for leave to appeal in this Court made it clear that the core of the complaint related to the substance of the Tribunal decision, the proceeding struck out by the High Court challenged only the PCC’s referral decision. The Court continued:⁸

[6] In the confined context of this interlocutory appeal, no question of general or public importance arises. Further, it does not appear, on the extensive material Ms Dai provided to the Court, to involve any risk of a substantial miscarriage of justice or a matter of general commercial significance. Moreover, as the substantive appeal has been abandoned in the Court of Appeal, Ms Dai’s intended appeal to this Court on procedural questions is moot.

[6] Ms Dai then filed a second application for leave which this Court treated as an application for recall.⁹ The application for recall was declined on the basis it was simply an attempt to relitigate the reasoning of the earlier judgment. The Court also addressed the applicant’s submission that the Court was wrong to treat the Court of Appeal proceeding as abandoned. The Court said that the leave judgment was “factually correct”.¹⁰ That was because, while Ms Dai’s proceeding in the Court of Appeal had not yet been struck out, her appeal was deemed abandoned under r 43 of the Court of Appeal (Civil) Rules on 25 July 2023. In any event, the question of abandonment was not the primary reason for the Court declining the initial leave application and Ms Dai had still not resolved the procedural defects in her claim at the time of the first application for recall.

[7] It was against this background that the current application for recall was filed together with the application for fee waiver and the review applications referred to above.

⁷ Leave judgment, above n 2, at [5].

⁸ Footnotes omitted.

⁹ Recall judgment, above n 1.

¹⁰ Recall judgment, above n 1, at [3].

The application for review of the fee waiver decision

[8] Under reg 5(2)(b) of the Supreme Court Fees Regulations 2003, the Registrar may waive the filing fee if satisfied that the appeal concerns “a matter of genuine public interest”, and it is “unlikely to be commenced or continued unless the fee is waived”.

[9] The application for a fee waiver was sought on the basis the proposed appeal concerns a matter of “genuine public interest”. Essentially Ms Dai says in her application that her case involves various concerns about the operation of the New Zealand Institute of Chartered Accountants (NZICA) with resultant broader implications. She states also that the NZICA admitted that the Tribunal decisions are the substantive matters; that the Court of Appeal proceeding is still ongoing; and that therefore a significant miscarriage of justice occurred in the previous Supreme Court judgment. In her application for review, Ms Dai refers to “disinformation” about a false “abandonment” in the Court of Appeal and that those proceedings have been reactivated. The Registrar in declining a fee waiver took the view that the case did not concern a matter of genuine public interest. Rather, the Registrar said that the challenge to the Court’s earlier decision:

... raises issues specific to [Ms Dai] as the applicant and will not determine a question of law that is of significant interest to the public or to a substantial section of the public.

[10] I agree. Resolution of the second application for recall and of the proposed appeal to this Court would turn on the specific facts of this case. No question of law or of genuine public interest arises. That position is not affected by whether or not an extension of time has been or may be granted by the Court of Appeal to enable the appeal in that Court to proceed, or whether the appeal is struck out. The context remains one in which Ms Dai has not, as this Court said earlier, resolved the procedural defects in her claim.

[11] The application for review of the Registrar’s decision to refuse to allow the second application for recall to proceed pending this review accordingly falls away.

Result

[12] The application for review of the decision of the Registrar declining to waive the filing fee is dismissed.

[13] The application for review of the decision of the Registrar to refuse to allow the second application for recall to proceed pending this review is dismissed.