



## THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

18 February 2025

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**ELIZABETH MARGARET AITKEN v JUDICIAL CONDUCT COMMISSIONER v  
ATTORNEY-GENERAL  
[2025] NZHC 190**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

**[NOTE: The judgment contains a suppression order. See below.]**

### **What is the case about?**

On 23 January 2025, the Judicial Conduct Commissioner recommended to the Attorney-General that she appoint a Judicial Conduct Panel to inquire into matters concerning the conduct of a serving District Court Judge, Ema Aitken.

On 10 February 2025, Judge Aitken filed proceedings seeking:

- (a) judicial review of the Commissioner’s decision (the grounds of the review are outlined below). This will be the substantive hearing, which is scheduled to be heard on 17 and 18 March 2025. The judgment released today does not address this substantive matter;
- (b) interim orders that the Acting Attorney-General ought not appoint a Judicial Conduct Panel based on the Commissioner’s recommendation until the Judge’s application for judicial review is determined; and that the Court file and record relating to this proceeding shall not be accessed by any person other than a party to the proceeding without the leave of a High Court Judge. The judgment released today addresses these interim orders.

Judge Aitken sought a review of the Commissioner’s decision (the substantive matter) on the basis that:

- (a) the Commissioner failed to provide adequate reasons for the decision; and

- (b) the Commissioner’s decision failed to identify precisely what conduct is in scope for a panel to consider.

The interim order preventing access to the file was granted with consent of the parties. This meant that the central issue for the Court was whether to grant an interim order preventing appointment of a Judicial Conduct Panel by the Acting Attorney-General.

### **What are the issues the Court had to consider?**

The Court had to consider whether an interim order should be granted under s 15(1) of the Judicial Review Procedure Act 2016. Section 15(1) allows the Court to make an interim order prohibiting a respondent from taking any further action in exercise of a statutory power if, in its opinion, it is necessary to do so to preserve the position of the applicant. This requires a two-stage approach.

First the Court had to consider whether an interim order was “necessary” to preserve the applicant’s position.

Second, the Court had to consider whether in its discretion it was appropriate to grant the interim relief sought. This requires consideration of a range of factors.

### **What did the Court decide and why?**

At the first stage, the Court considered Judge Aitken had a position that was reasonably necessary to preserve. Counsel for the Attorney-General submitted that the applicant, like all serving judges of New Zealand courts, enjoys security of tenure and there is no risk of her removal before the judicial review application is heard next month. However, the Court did not accept the submission that the only relevant position to be preserved is the Judge’s continuation in office. The power of the Attorney-General to appoint a Judicial Conduct Panel is the exercise of significant public power that has serious consequences for a judge, whether or not removal ensues. The Judge was entitled to consideration by the Acting Attorney-General based on a decision of the Commissioner that was error free and consistent with the purposes of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. It was this position that was considered necessary to preserve.

At the second stage, the Court considered that the relevant discretionary factors weighed in favour of granting the interim order that was sought. The grounds of review appear to be at least arguable, therefore the merits of the case tended to favour granting interim relief. Both the statutory power in issue and the public and private repercussions of relief were a neutral factor. This was because while delaying the statutory process may cut against a timely complaints process, a twin value informing the Act is the protection of judicial independence. Permitting a process leading to removal to proceed when it may be affected by illegality could also be considered to undermine Parliament’s objective. Finally, the duration of any interim order, the balance of convenience and the overall justice of the case clearly favoured the grant of an interim order. A key point here was the fact that the substantive judicial review hearing has been scheduled for 17 and 18 March 2025, therefore the delay to the statutory process will be minimal, and will not undermine the Act’s purpose.

## **What orders has the Court made?**

### **Interim orders:**

- (a) The Court declared that the Acting Attorney-General ought not take any further action that is, or would be, consequential on the Judicial Conduct Commissioner's decision concerning the applicant dated 23 January 2024, until further order of the Court.
- (b) By consent, the Court also made an order directing that the Court file and record relating to this proceeding shall not be accessed by any person other than a party to this proceeding without the leave of a High Court Judge, until further order.

**Suppression:** An order was made suppressing publication of any aspect of the Commissioner's proceedings referred to in the judgment, to the extent they are not already in the public domain. This order is necessary to preserve the Commissioner's duty of confidence, contained in s 19 of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.