IN THE SUPREME COURT OF NEW ZEALAND

SC 68/2013
[2013] NZSC 94

BETWEEN	EVGENY ORLOV Appellant
AND	NEW ZEALAND LAW SOCIETY First Respondent
	AUCKLAND LAWYERS STANDARDS COMMITTEE Second Respondent
	AUCKLAND LAWYERS STANDARDS COMMITTEE NO. 1 Third Respondent
	NATIONAL STANDARDS COMMITTEE Fourth Respondent

Court:	McGrath, William Young and Arnold JJ
Counsel:	Applicant (In Person) P J Morgan QC for Respondents
Judgment:	8 October 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs to the Respondents of $2,500.

REASONS

[1] The applicant, Mr Orlov, faces disciplinary proceedings brought by the respondents who are the New Zealand Law Society and certain of its Standards Committees constituted under the Lawyers and Conveyancers Act 2006. The

applicant seeks leave to appeal against a Court of Appeal judgment in judicial review proceedings that challenged procedural decisions of the respondent Standards Committees not to deal with complaints themselves, but to lay charges against him before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.[1]

[2] In the High Court, Heath J held that a number of matters, the subject of complaint did not meet a standard of sufficient seriousness to warrant their reference to and determination by the Tribunal.[2] On appeal by the applicant, and cross-appeal by the respondents, the Court of Appeal rejected the view that there is such an implicit threshold of seriousness standard which must be met before Standards Committees may determine matters to be addressed by the Tribunal.[3] Such a threshold test was an unwarranted gloss on the terms of s 152(2)(a) of the Lawyers and Conveyancers Act.[4] The Court also held that conduct of counsel in Court could be the subject of disciplinary proceedings. In particular, excessively aggressive or scandalous conduct in breach of professional statutory obligations was not protected from disciplinary proceedings under Bill of Rights guarantees.[5] The applicant's appeal was dismissed. The cross-appeal by the Standards Committees was allowed and their decisions confirmed.

[3] In his submissions to this Court the applicant makes a number of criticisms of the Court of Appeal's judgment. He submits that a general question of law arises from it on which we should give leave to appeal:

> What is the extent of the reviewability of Complaints Committee hearings resulting in a decision to charge a lawyer before the Tribunal?

[4] In our view, the only legal question arising from the judgment that might meet the requirements under s 13 of the Supreme Court Act 2003 for a second appeal, is whether there is a seriousness threshold that must be met before powers under s 152(2)(a) may be exercised by a Standards Committee. Accordingly we turn to whether it is necessary in the interests of justice for the Court to hear and determine an appeal on that ground.

---

1 *Orlov v New Zealand Law Society* [2013] NZCA 230 [*Orlov* (CA)].
2 *Orlov v New Zealand Law Society* [2012] NZHC 2154, [2013] 1 NZLR 390.
3 *Orlov* (CA), above n 1.
4 See [51]–[53].
5 At [77].

[5] The policy of the Supreme Court Act does not favour appeals to this Court on preliminary points that can be raised at the conclusion of the process. Section 13(4) requires that:

> The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.

The Court has held that this requirement generally will not be met if the point in issue can be taken on appeal after the substantive proceeding is concluded.[6] Strictly, s 13(4) does not cover the preliminary decision by Standards Committees to decide that complaints should be determined by a Tribunal, as it does not involve an interlocutory application to a Court, but an appeal concerning such a decision is analogous to one against an interlocutory order and s 13(4) is highly relevant to whether it is in the interests of justice test to permit a pre-hearing appeal of such a point.

[6] Procedural issues concerning the respondent Committees' decisions that complaints should be considered by Disciplinary Tribunal could of course have been raised before the Disciplinary Tribunal, and thereafter if necessary on an appeal to the High Court by way of rehearing and a further appeal to the Court of Appeal, with leave, on a question of law.[7] In such a case the High Court would generally consolidate any concurrent judicial review proceedings in respect to the Tribunal's decision with an appeal brought against it. The Court would not normally permit judicial review proceedings to be heard ahead of the statutory proceedings, other than in exceptional cases.[8] The Court of Appeal has also observed that, since the applicant's proceedings were issued, it has become settled that there is a right of review to the Legal Complaints Review Officer of Standards Committees' decisions made under s 152(2)(a).[9]

---

6 *Hamed v R (Leave)* [2011] NZSC 27, [2011] 3 NZLR 725 at [12]–[13].
7 Lawyers and Conveyancers Act 2006, ss 253 and 254.
8 See *Tannadyce Investments v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [5]–[6].
9 See *Orlov* (CA), above n 1, at [23]– [25].

[7] In this case the High Court and Court of Appeal heard and determined the judicial review proceeding in advance of the hearing. That does not mean it is in the interests of justice that we hear a second appeal. There is no settled basis of fact on which this Court could decide whether the way the Committees proceeded, and laid charges, was lawful and fair. The statutory process would probably provide helpful factual context and facilitate the Court's determination of the issue. Importantly, in our view, there is no prejudice to the applicant in requiring him to go through the disciplinary hearing process before seeking to raise his objections to the respondents' process on an application for leave to appeal in this Court. It is a straightforward application of the statutory procedure.

[8] For these reasons we are not satisfied that it is necessary in the interests of justice for us to hear and determine an appeal against the Court of Appeal judgment prior to the Tribunal's decision on the charges, and the determination by lower Courts of any appeals against that decision. The application for leave to appeal is dismissed. This means that the Tribunal's process must proceed on the basis of the Court of Appeal's judgment.

[9] Finally, we record that we received an application from Mr Deliu, another barrister who faces disciplinary proceedings, to intervene in this proceeding. We do not consider that his position justifies his intervention in this matter and refuse that application.

Solicitors:
Glaister Ennor for Respondents