

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA419/2017
[2018] NZCA 13**

BETWEEN CHRISTOPHER O'NEILL
 Applicant

AND KIT TOOGOOD, CECIL HARDING
 CROUCHER AND MATT AMON
 Respondents

Court: French, Winkelmann and Brown JJ

Counsel: Applicant in person
 S M Earl for Respondents

Judgment: 16 February 2018 at 10.15 am
(On the papers)

JUDGMENT OF THE COURT

The application for recall of judgment is declined.

REASONS OF THE COURT

(Given by Winkelmann J)

[1] On 9 November 2017, this Court issued judgment declining an application by Mr O'Neill to extend the time to appeal a decision of Cull J.¹ Cull J had refused Mr O'Neill's application to recall a judgment of Toogood J in another set of High Court proceedings.² This Court declined the application for leave on the grounds that

¹ *O'Neill v Toogood* [2017] NZCA 505. The judgment of Cull J is *O'Neill v Toogood* [2017] NZHC 795.

² *O'Neill v Accident Compensation Corporation* [2015] NZHC 2823.

Mr O'Neill's proposed appeal was so fatally flawed that it could not possibly succeed. Therefore, although the delay had not been great, the application for extension of time was declined.³

[2] Mr O'Neill now seeks leave to recall this Court's judgment. The grounds he advances are as follows:

- (a) the judgment is unsafe and corrupt and was orchestrated to pervert justice to protect a fellow judge;
- (b) two of the Judges had a conflict of interest which was not disclosed and was in any case disqualifying; and
- (c) no grounds for the judgment exist.

[3] The test for recall of civil judgments was described by Wild CJ in *Horowhenua County v Nash (No 2)* as follows:⁴

Generally speaking, a judgment once delivered must stand for better or worse, subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled — first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and higher authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[4] The grounds Mr O'Neill raises are without substance. But in any case, they do not constitute grounds for a recall of judgment.

[5] Accordingly, the application for recall of judgment is declined.

Solicitors:
Meredith Connell, Auckland for Respondents

³ *O'Neill v Toogood*, above n 1, at [13].

⁴ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.