

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2013-404-4757
[2014] NZHC 575**

BETWEEN EVGENY ORLOV
 Plaintiff

AND THE NATIONAL STANDARDS
 COMMITTEE NO.1
 Defendant

Hearing: On the papers

Counsel: F C Deliu for Plaintiff
 W Pyke for Defendant

Judgment: 26 March 2014

JUDGMENT OF FOGARTY J

*This judgment was delivered by me on 26 March 2014 at 4.30 p.m.,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors:
F C Deliu, Auckland
W Pyke, Auckland

[1] Mr Orlov has applied for a Court of Appeal composed of three foreign judges or three retired New Zealand judges. Failing that his counsel, Mr Deliu, seeks a full court of two or three judges.

[2] Mr Pyke, for the Hearing Committee, opposes the application for three foreign or three retired judges. He advises that the new act, the Lawyers and Conveyancers Act 2006, is silent upon the composition of the court. He is formally neutral as to number of judges who sit.

[3] The High Court only rarely sits as a full court. It does so if a statute requires it – as it did under the Law Practitioners Act 1982.

[4] Both Acts supplement the High Court's inherent jurisdiction to control who has audience before the Court. Independently of statute law, judges of inherent jurisdiction have an ongoing interest in the discipline of counsel who appear before it. The statutory right of appeal to the High Court is, accordingly, not surprising and is appropriate.

[5] This appeal is unusual as it involves issues of disrespect by a practitioner to a sitting High Court Judge. The penalty imposed has been striking off. I am not aware of any diminution by judges of this Court in the importance of careful examination of issues of misconduct of barristers and solicitors. For this reason, coupled with the inherent jurisdiction of this Court to control who should have audience before this Court, I think the practise of a full court of two judges should continue. I do not consider that a three judge court is required. That would be beyond the traditions of this Court.

[6] Accordingly, the appeal will be heard by a full court of two judges.

[7] As to the composition of the full court, foreign judges are not judges of this Court. There is no statutory or inherent power of this Court to appoint foreign judges. At any one time there can be one or more judges who have retired, sitting again part-time, reappointed by the Attorney-General. Upon reappointment they are sitting High Court judges.

[8] The allocation of this appeal to judges will follow the practise summarised in Winkelmann J's minute of 24 March 2014.