IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA125/2023
[2025] NZCA 273

BETWEEN	FRANCISC CATALIN DELIU Appellant
AND	NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL First Respondent
	NATIONAL STANDARDS COMMITTEE 1 AND AUCKLAND STANDARDS COMMITTEE 1 OF THE NEW ZEALAND LAW SOCIETY Second Respondent

Hearing:	3 July 2024
Court:	Goddard, Mallon and Cooke JJ
Counsel:	Appellant in person M J Hodge and K A Pludthura for First and Second Respondents and New Zealand Law Society as Intervener A Bloomfield and A A A Ghandour for Attorney-General as Intervener
Judgment:	25 June 2025 at 1 pm

JUDGMENT OF THE COURT

A The appeal is dismissed.

B There is no order as to costs.

REASONS OF THE COURT

(Given by Mallon J)

Introduction

[1] The appellant, a lawyer on the New Zealand roll at the relevant time, was subject to three sets of professional disciplinary charges brought against him in 2010, 2012 and 2015. On 22 December 2016 the Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) suspended the appellant for 15 months and ordered him to pay costs on the charges it had found proven. The appellant appealed to the High Court and also sought judicial review. The appeal and the judicial review were heard together. On 25 September 2017 the High Court dismissed the appeal and judicial review except to make an adjustment to the costs order.[1]

[2] Some years later, the appellant brought a new judicial review application. This time he challenged the New Zealand Law Society's (NZLS) processes in appointing the members of the Tribunal. He brought this second judicial review application because he is seeking to be admitted to the Florida bar and believes he is unable to gain admission because he has been subject to a period of suspension. He seeks to have the Tribunal's decision set side.[2] On 9 February 2023 the High Court dismissed this second judicial review as an abuse of process.[3] He appeals this decision.

Background

First set of charges[4]

[3] The first set of charges brought against Mr Deliu concerned allegations he made about a High Court Judge (Harrison J) and the then Chief High Court Judge (Randerson J).

[4] The allegations against Harrison J arose out of cases in which Mr Deliu was the solicitor on the record where the Judge was critical of Mr Deliu, as well as complaints the Judge made to the NZLS about Mr Deliu. Mr Deliu's allegations were

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1 *Deliu v National Standards Committee* [2017] NZHC 2318 [judgment of Hinton J].

2 Mr Deliu's application seeks a range of other relief but for present purposes this is the most relevant.

3 *Deliu v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2023] NZHC 160 [judgment of Peters J].

4 We take the summary of the three sets of charges from the judgment of Hinton J, above n 1, at [7]–[21].

made in letters to the Judicial Conduct Commissioner, in a letter to Randerson J, in an application to the High Court for Harrison J to be permanently recused from cases filed by Mr Deliu and another lawyer (Mr Orlov), and in an application to the Supreme Court. The allegations included, for example, that the Judge was racist, out of control, a danger to the public and the complaints the Judge made to the Law Society were malicious, vindictive and oppressive.

[5] The allegations against Randerson J arose out of the Judge referring Mr Deliu's conduct in relation to Harrison J to the Law Society. They were made in a complaint to the Judicial Conduct Commissioner about the Judge. The allegations included, for example, that the Judge had put aside his judicial oath and embarked on a personal crusade to destroy the careers of Mr Deliu and Mr Orlov for the purpose of stifling lawful complaints, and appeared to be protecting his fellow Judge.

[6] Six charges of professional misconduct for making allegations that were false or without any sufficient foundation were found proven by the Tribunal.[5]

Second set of charge

[7] The second set of charges arose out of a meeting of the Auckland District Law Society Complaints Committee that had been convened to consider the conduct of Mr Orlov. Mr Deliu, who it seems was representing Mr Orlov, and Mr Orlov were said to have entered the meeting without invitation, refused to leave when requested, and interrupted the meeting (shouting and making demands and frightening at least one of the Committee members) to the extent that the Chair adjourned the meeting.

[8] A charge of conduct unbecoming a practitioner brought against Mr Deliu was found proven by the Tribunal.[6]

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5 *National Standards Committee No 1 v Deliu* [2016] NZLCDT 26. See Law Practitioners Act 1982, s 112(1)(a) and Lawyers and Conveyancers Act 2006, s 7(1)(a)(i) and (ii).

6 *Auckland Standards Committee No 1 v Deliu* [2016] NZLCDT 25. See Lawyers and Conveyancers Act, s 12(b)(i).

Third set of charges

[9] The third set of charges arose out of adverse comments made about Mr Deliu in various judgments between 2008 and 2009. A charge alleging a pattern of behaviour which constituted negligence or incompetence in Mr Deliu's professional capacity of such a degree and/or so frequent as to reflect on his fitness to practise and/or as to bring the profession into disrepute was found proven by the Tribunal.[7] A charge of unsatisfactory conduct, being conduct which fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, was also found proven by the Tribunal.[8]

Penalty decision

[10] The Tribunal gave its penalty decision on all three sets of charges on 22 December 2016.[9] It ordered that Mr Deliu be suspended from practice for 15 months with effect from 1 February 2017. It also ordered that Mr Deliu pay costs to the Standards Committee of $153,500 and that he pay the NZLS $108,500, being a proportion of the Tribunal's costs which had been met by the NZLS.

High Court appeal (2015)

[11] Prior to the Tribunal's decisions on the charges, Mr Deliu had filed an appeal against orders made by the Chair of the Tribunal, Judge Clarkson, appointing a division of the Tribunal to be chaired by Mary Scholtens KC, and appointing Susan Hughes KC, Graeme McKenzie, Chris Rowe and William Smith as members of the division.

[12] Mr Deliu's grounds of appeal were that:[10]

(a) Judge Clarkson had earlier recused herself from the proceedings which meant it was an error for her to have any further involvement in the

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7 *National Standards Committee No 1 v Deliu* [2016] NZLCDT 27. See Law Practitioners Act, s 112(1)(c).

8 Lawyers and Conveyancers Act, s 12(a).

9 *National Standards Committee No 1 v Deliu* [2016] NZLCDT 41.

10 See *Deliu v Auckland Standards Committee 1* [2015] NZHC 1023 at [3] for a fuller description of these grounds.

proceedings. The appointments were ultra vires or ought to be reversed by the High Court.

(b) The Tribunal erred in law in denying Mr Deliu a random allocation of decision maker. It acted with bias because, in the earlier recusal, Judge Clarkson had given the impression that she had recused herself when in fact this had only occurred after the Judicial Conduct Commissioner upheld a complaint.

(c) The Tribunal breached natural justice in making its appointment of a new Chair without affording Mr Deliu an opportunity to be heard.

[13] Woolford J in the High Court determined that there was no jurisdiction to hear the appeal.[11] The Judge therefore did not address the merits of the grounds raised. The Judge went on to say:

> [9] Mr Deliu has urged me to treat this appeal as an application for judicial review. I am, however, of the view that an application for judicial review needs to be properly pleaded with affidavit evidence filed. I therefore decline to treat this appeal as an application for judicial review.
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> [10] I should say that Mr Deliu will nonetheless be able to appeal to the High Court against an order or decision of the Tribunal in due course should the Tribunal later make an order or decision adverse to his interests. It is then that he can raise issues of any procedural impropriety, bias or lack of natural justice in the setting up of the division of the Tribunal that is to hear his case. Mr Deliu will not be denied his day in Court. This appeal is however premature.

High Court appeal and judicial review (2017)

[14] Mr Deliu subsequently brought an appeal and a judicial review application of three Tribunal liability decisions and the penalty decision, but not on the grounds that were before Woolford J. The appeal and judicial review were dismissed by Hinton J as follows:

(a) In relation to the first set of charges, the Judge rejected Mr Deliu's contentions that: the Tribunal had failed to give proper effect to the right

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11 At [4].

to freedom of expression;[12] he was not providing "regulated services" and so his conduct did not qualify as professional misconduct for the purposes of the charge;[13] it had not been proven that what he had said about the Judges was false;[14] a practitioner owed no greater duty of respect to the judiciary than to anyone else, he had made his complaints through proper channels rather than in public, and the dignity of the judiciary was not undermined;[15] and he had absolute or qualified privilege or absolute immunity from prosecution.[16]

(b) In relation to the second charge, Mr Deliu contended that he was not providing "regulated services" for the purposes of this charge. On reflection he accepted that he was running an incorrect technical argument and that the charge was proven.[17]

(c) In relation to the first set of charges and the second charge, the Judge rejected Mr Deliu's contention he had been treated unfairly as against comparable cases.[18]

(d) In relation to the third set of charges, the Judge rejected that: the Tribunal had applied the wrong standard of proof in dismissing

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12 Judgment of Hinton J, above n 1, at [44], [48] and [51]. The Judge noted that this Court's decision in *Orlov v New Zealand Law Society* [2013] NZCA 230, [2013] 3 NZLR 562 had earlier determined (at [120]–[122]) in respect of similar conduct that the right to freedom of expression did not protect the disrespectful and scandalous allegations against a Judge exercising judicial authority from disciplinary action. This decision was binding on the Tribunal and the High Court, and the Tribunal had correctly applied the law.

13 Judgment of Hinton J, above n 1, at [64]. The Judge found that the definition of "regulated services" covered Mr Deliu's actions.

14 At [73], [75]–[76] and [79]. The Judge rejected this because his apology letters acknowledged that what he had said was "wrong". Further the Tribunal had rejected Mr Deliu's arguments under this head without reliance on the apology letters and the Judge considered the Tribunal's reasoning was correct. A further related argument was rejected as "nonsensical".

15 At [82] and [86]–[87]. The Judge rejected these arguments, agreeing with the Tribunal that practitioners must have particular respect to the judiciary arising out of the fundamental obligation to uphold the rule of law and to facilitate the administration of justice. The Judge also noted that not all the channels where Mr Deliu made his allegations were private and that "[r]ealistically, particularly with scandalous matters of this nature" others would become aware of them. As to the dignity of the judiciary, the Judge considered that "[t]he fact that the Chief High Court Judge was moved to lay a complaint with the Law Society, speaks volumes for the offence caused".

16 At [93]–[94] and [99].

17 At [66] and [69].

18 At [106] and [111]–[112]. The Judge rejected Mr Deliu's argument that his immigrant background was the reason for the findings and also rejected that his conduct at the Complaints Committee meeting was trivial.

Mr Deliu's strike out application and in finding the charges proven;[19] the judgments relied on by the Tribunal were inadmissible and that he had no opportunity to respond to them;[20] there was insufficient evidence to prove the charges;[21] and the delay in laying the charges was an abuse of process and the Tribunal erred in finding he was responsible for the delay.[22]

(e) In relation to all charges, the Judge rejected Mr Deliu's contention that the Tribunal should have stayed the charges because of alleged prosecutorial misconduct by the lawyer originally acting for the Standards Committees.[23]

(f) As to the judicial review, Mr Deliu accepted that this was duplicative of his appeal except in relation to costs concerning the lawyer for the Tribunal continuing to act after his recusal. As to the latter, although the Judge understood that Mr Deliu accepted the lawyer could continue to act for a reasonable period, erring on the side of caution the Judge directed the Standards Committees to deduct the lawyer's invoices for costs after his recusal.[24]

[15] As to penalty, the Judge rejected the Standards Committees' cross-appeal contending that Mr Deliu should have been struck off.[25] The Judge also rejected Mr Deliu's contention that at the most he should have been suspended for seven months rather than for 15 months as the Tribunal had found.[26] The Judge also rejected

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19 At [114], [116] and [117].

20 At [120]–[121], [124] and [129]. The Judge noted that the judgments were not being used to prove the existence of a fact that was in issue in the particular proceeding, the Court of Appeal and a Full Court of the High Court had dismissed a similar argument and Mr Deliu had the opportunity before the Tribunal to respond to and refute the criticisms made of him.

21 At [139]–[140]. The Judge noted that the Tribunal had evidence of six different judgments where a number of Judges had made significant criticism of Mr Deliu and this was not the only material evidence before the Tribunal.

22 At [144]–[147]. The Judge agreed with the Tribunal that Mr Deliu was very largely causative of the delay and had not suffered prejudice from it.

23 At [148]–[149]. The Judge agreed with the Tribunal that Mr Deliu's characterisation of this was "extraordinary and not accepted".

24 At [150]–[153].

25 At [189]–[192].

26 At [193]–[206].

Mr Deliu's appeal against the costs order made against him except in relation to the lawyer's invoices as referred to above.[27]

[16] Mr Deliu's application for leave to appeal the decision dismissing his appeal from the Tribunal's decisions was declined.[28] He filed an appeal against the High Court's dismissal of his judicial review. However, that appeal was deemed abandoned as a result of his failure to pay security for costs on the appeal.[29] This meant that by 2018 his appeals from the Tribunal decisions and his judicial review were at an end.

Further judicial review (2021)

[17] In 2021 Mr Deliu filed a further judicial review application. This statement of claim pleaded that the liability and penalty decisions of the Tribunal were invalid and of no effect for a range of reasons relating to:

(a) the manner in which the Tribunal's members were or were not appointed or assigned and the way in which the Deputy Chairperson was replaced;

(b) the way in which the Chairperson was designated, the Chairperson's alleged lack of independence, and the actions of the Chairperson after her recusal;

(c) whether there was a lawful quorum;

(d) the absence of a record of a "vote" for the decisions that required unanimity or a majority; and

(e) the way in which the three sets of charges were heard separately.

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27 At [207]–[224].
28 *Deliu v National Standards Committee* [2018] NZHC 2873.
29 *Deliu v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2018] NZCA 145; and Court of Appeal (Civil) Rules 2005, r 43.

[18] As explained by Peters J in the High Court, Mr Deliu brought this new judicial review application because:[30]

> [32] At the hearing before me, the plaintiff advised that he has brought this proceeding as he wishes to gain admission to practise law in Florida but is unable to do so as matters stand. The plaintiff's affidavit evidence is that, absent exceptional circumstances, the bar association in Florida will not admit a practitioner who has been suspended from legal practice. Having learned of this, the plaintiff resolved to:
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> > … see if there was any flaw [in his disciplinary history in New Zealand] that I could point to in the process to try and persuade Florida to grant me the [required] waiver. Upon doing so I came across the issue of Judge Clarkson recusing herself and then continuing to act … I thus used that as a starting point of pleadings.
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> [33] From there, as the plaintiff advised me in the hearing, he resolved to investigate whether all the members of the divisions had been validly appointed, and to this end he asked the Tribunal to give discovery of documents relating to those appointments. To the extent they were able to do so, the Tribunal and the NZLS (assisted by Crown Law) supplied these documents, whether from their own files or through causing searches to be made by other entities such as the Ministry of Justice and Cabinet Office. As it turns out, it has been possible to locate some but not all of the requested documents, which Crown Law has advised would be stored at Archives New Zealand. In any event, the plaintiff has put the documents that were provided to him before the Court in support of his submission that the members of the divisions were not validly appointed.

[19] The Judge dismissed the judicial review application.[31] As the Judge noted, the application was "new" in the sense that it raised matters that were not part of Mr Deliu's first judicial review (which had largely reflected his appeal grounds).[32] Nevertheless it was necessary to consider whether the application was an abuse of process as offending the requirement for finality in litigation.[33] The Judge concluded that the application was an abuse of process because Mr Deliu could and ought to have raised each of the issues now raised in his earlier proceedings and on a "broad, merits-based judgment" it was not in the interests of justice for the matter to proceed.[34]

[20] Mr Deliu appeals from this decision.

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30 Judgment of Peters J, above n 3. In his submissions to this Court, Mr Deliu accepted this summary of the background "save for one point which is of no moment".

31 At [75].

32 At [7].

33 At [7] and [35].

34 At [38]–[39] and [51].

Legal principles

[21] It has long been established that an abuse of process may arise where a party in a proceeding attempts to raise an issue that could have been pursued in an earlier proceeding between the same parties on the same subject matter.[35] This principle, often referred to as a *Henderson v Henderson* abuse of process, reflects the public interest in the finality of litigation and that a party "should not be twice vexed" in the same matter.[36] The principle is "as applicable to judicial review as it is to general proceedings".[37]

[22] To be an abuse, it is not enough that the issue could have been raised in an earlier proceeding as it is "wrong to hold that because a matter could have been raised in earlier proceedings it should have been".[38] Whether it does amount to an abuse of process involves a "broad, merits-based judgment" that takes account of the public and private interests involved and the facts of the case, with the crucial question being whether "in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before".[39]

Discussion

Could Mr Deliu have raised the issues in the earlier proceedings?

[23] Peters J was satisfied that Mr Deliu could and ought to have raised each issue in the earlier proceeding.[40] As to the contention that Judge Clarkson was precluded from taking any further steps after recusal, the Judge noted that Mr Deliu acknowledged this could have been pursued in the earlier proceedings.[41] The Judge was also of the view that it was open to Mr Deliu to advance in the earlier proceedings

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35 *Henderson v Henderson* (1843) 3 Hare 100 at 115, 67 ER 313 at 319 (Ch), applied in, for example, *Faloon v Planning Tribunal at Wellington* [2020] NZCA 170; *Broadspectrum (New Zealand) Ltd v Nathan* [2017] NZCA 434; and *Beattie v Premier Events Group Ltd* [2014] NZCA 184, [2015] NZAR 1413.

36 *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 (HL) at 31, cited, for example, in *Faloon v Planning Tribunal at Wellington*, above n 35, at [2]; *Broadspectrum*, above n 35, at [50]; and *Beattie v Premier Events Group Ltd*, above n 35, at [44].

37 *Dotcom v District Court at North Shore* [2018] NZCA 442, [2018] NZAR 1859 at [34].

38 *Johnson v Gore Wood & Co (a firm)*, above n 36, at 31.

39 At 31.

40 Judgment of Peters J, above n 3, at [39].

41 At [40].

a range of other matters now raised and it was irrelevant that it may not have occurred to Mr Deliu to do so.[42]

[24] As to whether the members were properly appointed in accordance with the Lawyers and Conveyancers Act 2006, the Judge noted Mr Deliu submitted that, even if it had occurred to him to investigate these matters, he would not have succeeded in obtaining the relevant documents because the Standards Committees would have opposed any application for discovery.[43] The Judge rejected this submission because:

> [44] The first [reason] is that the plaintiff says he began to investigate whether members of the Tribunal had been properly appointed after he recalled and decided to pursue the points [raised in the appeal before Woolford J]. As [counsel for the New Zealand Law Society] submits, however, had [Mr Deliu] pursued those points in the [earlier] proceedings [before Hinton J], there is no reason to believe he would not also have pursued his "proper appointment" point, as he has now.
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> [45] Nor do I accept [that Mr Deliu] would not have obtained the documents he now has, had he sought them in the [earlier] proceedings [before Hinton J]. Documents pertaining to the appointment of lay members may be obtained under the Official Information Act 1982. Those relating to the appointment of lawyer members may not be obtained under that Act. However, [Mr Deliu's] submission that he would not have been able to obtain them, whether by agreement (as in this instance) or by order of the Court, is speculative. There is no reason to believe that the co-operation extended to [Mr Deliu] in the present case would have been refused in the [earlier] proceedings. Even if it were, there is no reason to consider the Court would have declined to order discovery of the documents.

[25] Mr Deliu submits that Peters J erred in concluding that he could have raised the matters that are the subject of his 2021 judicial review application in his earlier proceedings. He says the Judge was required to have actual evidence before her proving on the balance of probabilities that he could have done so. He says he would have needed a proper evidential basis to raise the issues, there is no right to discovery in judicial review and the Judge erred in her view that documents relating to appointments are available under the Official Information Act 1982.

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42 At [41]. These matters were Mr Deliu's contentions that: there was no evidence of how the members of the division voted; Judge Clarkson did not have jurisdiction to designate Ms Scholtens as chair which meant that the division was in breach of the statutory mandatory number of lay and lawyer members; the Tribunal members were not properly identified because their full names (as they appeared on the roll) were not used; and a handwritten alteration to a typed document substituting one member for another on an interlocutory division was not a sufficient act or notice of assignment.

43 At [42].

[26] Mr Deliu's submissions miss the point of what is meant by this component of the *Henderson v Henderson* principle. The relevant inquiry is whether the issues now raised were grounds available to him to pursue at the time of the earlier proceeding, not whether he had thought about them nor how he would obtain the evidence to support them. The fact is that the challenged appointments were all in place prior to the Tribunal's decisions on the charges and therefore prior to his appeal and judicial review determined by Hinton J in 2017. They were able to be pursued at the time albeit that Mr Deliu needed to think of them and pursue obtaining the documents that he regarded as supporting them. Woolford J's judgment in 2015 informed Mr Deliu was that he could raise matters of this kind on his appeal. Despite this, Mr Deliu did not do so.

Broad merits-based judgment

[27] As to the broad merits-based judgment, the Judge concluded that in the circumstances Mr Deliu was misusing or abusing the process of the Court because:

(a) The earlier proceedings were comprehensive, involving considerable resource, judicial and otherwise, and it was not in the public interest to devote more.[44] It did not matter that neither the respondents nor the contradictor had raised the *Henderson v Henderson* principle. Finality in litigation was intended to protect not only the parties but also to ensure the efficient use of resources. It was open to the Court to raise the matter of its own volition and there was no suggestion that Mr Deliu was prejudiced because he had been given time to respond and did so in a comprehensive way.[45]

(b) The lapse of time was important.[46] The charges were laid in 2010, 2012 and 2015. Judge Clarkson designated Ms Scholtens to chair the division of the Tribunal in late 2014. The relevant period in which the challenged appointments were made was 2014 and 2015. This further judicial review application was issued in August 2021. To compound

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44 At [48].
45 At [49].
46 At [50].

> matters, Mr Deliu sought to bolster his submission that the appointments were not properly made with reference to what he contends were fatal absences or omissions in the historic documents made available to him.

[28] We agree with the Judge that the comprehensive nature of the earlier proceeding, the resources involved in that proceeding, and delay are significant reasons that support the public interest in the finality of litigation. To them we would add two further points.

[29] The first is that this judicial review application is in effect challenging Hinton J's decision that upheld the decision of the Tribunal on the charges found proven and the penalty imposed. Judicial review is not to be used to undermine an appeal regime.[47] As it was put by this Court in *Faloon v Planning Tribunal at Wellington*, the applicant "has already exhausted his appeal rights against that judgment. He may not go round the back and attempt re-entry through the tradesman's entrance of judicial review".[48] And similarly, as this Court said in *Dotcom v District Court at North Shore*:[49]

> [32] These new proceedings seek to engage judicial review collateral to a statutory right of appeal. That is impermissible where the basis of the review claim is capable of being advanced on appeal instead and that form of recourse is more appropriate. …
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> [33] In any event it may also be observed that Gilbert J was also seized of an application for judicial review … If judicial review was needed, that vehicle was running before Gilbert J. Mr Dotcom's failure to fully fuel that vehicle does not permit him to go back to square one and restart the journey. …
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> [34] … the raising of further grounds as an afterthought — particularly in circumstances where parallel statutory rights of appeal have been pursued — renders the current applications for review an attempt to reopen the earlier litigation.

[30] These observations apply to Mr Deliu's judicial review application here, and all the more so given that in 2015 he had been informed by Woolford J that he could

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47 *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [15].

48 *Faloon v Planning Tribunal at Wellington*, above n 35, at [17] (footnote omitted).

49 *Dotcom v District Court at North Shore*, above n 37.

bring the kind of matters he now seeks to raise as part of an appeal from the Tribunal's decision.

[31] The second point concerns Mr Deliu's submission that the reasons given by Peters J failed to take into account the very strong public interest in the proceeding that meant "the Tribunal has sat as an illegally constituted body for years, possibly from its inception and likely has never in its entire existence sat as a lawfully constituted body". He says that this raises "obvious rule of law concerns". He says the function of the High Court in its supervisory jurisdiction is not limited to resolving disputes. It has the duty to uphold the rule of law over executive government action and in its supervision of the conduct of inferior courts and tribunals.

[32] However, there is no rule of law issue requiring this Court's intervention here. Statutory decisions are valid and effective unless and until they are set aside.[50] Here they have not been set aside. Moreover, even if the Tribunal members had been invalidly appointed, the de facto officer doctrine would apply to prevent collateral challenges to the validity of the Tribunal's decisions on the basis of unknown flaws or defects in the appointment or authority of the members and the Tribunal.[51] This doctrine is "firmly based in the public policy of protecting the public's confidence in the administration of justice" and is a "well-established exception to the ultra vires

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50 As stated in *Ortmann v United States of America* [2020] NZSC 120, [2020] 1 NZLR 475 at [535] where it was said: "Many cases have established that a decision of an administrative decision-maker or a court that is subject to judicial review is treated as valid unless and until it is set aside by a court of competent jurisdiction." Footnote omitted.

51 *Ararimu Farms & Investments Ltd v Stotter* [1993] MCLR 1 (CA) at 4–5; and *Miller v New Zealand Parole Board* [2010] NZCA 600 at [117], n 42. In England and Wales, see *Fawdrey & Co v Murfitt* [2002] EWCA Civ 643, [2003] QB 104. The doctrine has been held to apply to Disciplinary Tribunals of, and Visitors to, the Inns of Court: *R (Argles) v Visitors to the Inns of Court* [2008] EWHC 2068 (Admin) at [36]–[42]; and the decision of the Visitors to the Inns of Court in *Russell v Bar Standards Board*, 12 July 2012 at [37] and following. See also the discussion in Christopher Forsyth and Julian Ghosh *Wade & Forsyth's Administrative Law* (12th ed, Oxford University Press, Oxford, 2022) at 220–222 where the doctrine is described as long-standing, preventing collateral challenges where there is some unknown flaw in the appointment or authority of some officer or judge, with the logic of annulling all their acts yielding to the desirability of upholding them where they have acted in the office under a general supposition of their competence to do so. Compare with the decision of the Federal Court of Australia in *Kutlu v Director of Professional Services Review* [2011] FCAFC 94, (2011) 197 FCR 177 in which the Minister had not complied with the statutory requirement to consult with the Australian Medical Association when appointing members to the Professional Services Review Panel. The Full Court held that the de facto doctrine could not operate to validate affected decisions of the Panel.

rule".[52] If there are known flaws or defects in future appointments to the Tribunal, they can be raised in a timely manner in proceedings relating to those decisions.

[33] Although we received submissions as to the merits of the arguments Mr Deliu wishes to advance in this judicial review proceeding, we decline to consider them. As Peters J said, the public interest in finality of litigation includes consideration of the resources of the court. Here considerable resource, judicial and otherwise, has already been expended. Although it was not necessary to do so, the Judge did go on to consider whether there was sufficient evidence that the lawyer and lay members who heard the charges and determined penalty were appointed in accordance with the requirements of the Act. The Judge was satisfied there was. It is not in the public interest to devote more judicial resource to a consideration of the merits of this further judicial review application when we are satisfied that the judicial review is an abuse of process. We simply note that the interveners filed comprehensive submissions strongly rejecting the grounds Mr Deliu advanced.

Result

[34] The appeal is dismissed.

[35] There is no order as to costs.

Solicitors:
New Zealand Law Society, Auckland for Respondents and New Zealand Law Society as Intervener
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Attorney-General as Intervener

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52 *Wade & Forsyth's Administrative Law*, above n 51, at 220.