

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA772/2024
[2026] NZCA 76

BETWEEN	TONI COLIN REIHANA Appellant
AND	JUDICIAL CONDUCT COMMISSIONER Respondent

Hearing: 13 November 2025

Court: Thomas, Harland and Cull JJ

Counsel: Appellant in person
N M H Whittington for Respondent

Judgment: 18 March 2026 at 3.00 pm

JUDGMENT OF THE COURT

- A The appeal is dismissed.**
- B There is no order as to costs.**
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REASONS OF THE COURT

(Given by Cull J)

[1] Mr Reihana appeals the decision of the High Court declining his judicial review of the decisions of the Judicial Conduct Commissioner (Commissioner) that he had no jurisdiction to deal with Mr Reihana’s complaints about the involvement of an Associate Judge in the interlocutory stages of several judicial review proceedings.¹

¹ *Reihana v Judicial Conduct Commissioner* [2024] NZHC 3185 [judgment under appeal].

[2] Mr Reihana contends that the involvement of Associate Judge Lester in the case management of his judicial review proceedings contravened s 22(4)(h) of the Senior Courts Act 2016. Section 22(4)(h) prohibits the making of any rules that confer jurisdiction and power on Associate Judges in relation to an application for review or other relief under the Judicial Review Procedure Act 2016.

[3] Mr Reihana complained twice to the Commissioner, who dismissed these complaints because he had no jurisdiction to consider them.² Mr Reihana applied for judicial review of the Commissioner's decisions, and Radich J declined the application.³ The Judge concluded that the Commissioner was correct in finding that, under ss 8(2) and 16(1) of the Judicial Commissioner and Judicial Conduct Panel Act 2004 (the Act), Mr Reihana's complaint was not within the Commissioner's jurisdiction.⁴

[4] Mr Reihana now appeals the High Court's decision on the grounds that the Judge mischaracterised his complaints to the Commissioner. Mr Reihana asserts that the Associate Judge was "presiding" over his proceedings in breach of s 22(4)(h) of the Senior Courts Act. As a result, he says the Commissioner was wrong to find that he had no jurisdiction to consider Mr Reihana's complaints about Associate Judge Lester. The Commissioner abides the decision of the Court.

Background

[5] Mr Reihana filed three sets of proceedings in which he challenged the conduct of the Rakiura Titi Committee, in relation to the Titi (Muttonbird) Islands Regulations 1978. The High Court stayed those proceedings in August 2016.⁵

[6] Mr Reihana subsequently filed a number of applications in relation to the stayed proceedings.⁶ From 2020–2024, Associate Judge Lester issued minutes responding to Mr Reihana's various applications and requests. Many of the Associate Judge's minutes explained why Mr Reihana's applications could not be

² At [1] and [3]–[5].

³ At [20].

⁴ At [15] and [17]–[19].

⁵ *Reihana v Rakiura Titi Committee* [2016] NZHC 2048, [2016] NZAR 1491 at [53].

⁶ Judgment under appeal, above n 1, at [12].

considered in light of the stay. On 8 November 2023, Mr Reihana applied to recuse the Associate Judge from dealing with the proceedings and, in a minute dated 23 November 2023, the Associate Judge declined to do so.⁷

[7] Mr Reihana made two complaints to the Office of the Judicial Conduct Commissioner. We adopt the Judge’s summary of the remaining background facts:⁸

[3] The first complaint was made on 27 November 2023. The basis for the complaint was that the Associate Judge had failed to uphold Mr Reihana’s interlocutory application to recuse himself on the basis of s 22(4)(h) and “for harmonising with the case respondents unlawful demands/antics”. The second complaint, dated 16 January 2024, was again based upon a concern on Mr Reihana’s part that the Associate Judge did “not have conferred power and jurisdiction pursuant to s 22(4)(h) of Senior Courts Act 2016 – to deal with an Application for Review pursuant to Judicial Review Procedure Act 2016”.

[4] In a decision of 11 January 2024, the Commissioner found that he had to dismiss the first complaint under s 16(1)(a) and (f) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 because, having regard to s 8(2) of the Act, it was a matter that was outside his jurisdiction and because, in addition, the complaint was about judicial decisions that were subject to rights of appeal or rights to apply for judicial review.

[5] In a decision of 7 June 2024, he found that he had to dismiss the second complaint under s 16(1)(a) for the same reasons and because, in terms of s 16(1)(i), he had previously considered the subject matter of the complaint and no new issue of significance had been raised that he had not considered previously.

Judicial review decision

[8] Mr Reihana applied to the High Court for judicial review of the Commissioner’s decisions under the Judicial Review Procedure Act. The cause of action was expressed in the following way:⁹

The respondent, after being warned twice how to do his job properly, has flagrantly and deliberately failed to take account of highly relevant considerations (legislation interpretability) in the making of his initial decision of 12th January 2024, and again in a further, yet the same; decision on 7th June 2024, therefore respondent [Judicial Conduct Commissioner’s] decision making is tainted with jurisdictional errors.

⁷ *Reihana v Rakiura Titi Committee* HC Invercargill CIV-2014-425-102, 23 November 2023 at [2].

⁸ Judgment under appeal, above n 1.

⁹ At [7].

[9] The Judge described Mr Reihana's submissions and documents as being focussed on his claim that the Associate Judge had no jurisdiction to make any order, direction or decision in his judicial review proceedings.¹⁰ Mr Reihana sought orders setting the decisions aside and a declaration, remuneration for preparing the case, and damages for the mental consequences of the Commissioner's decision.¹¹

[10] The Judge found that the obstacle facing Mr Reihana was s 8(2) of the Act, which provides that it is not a function of the Commissioner to challenge or to call into question the legality or correctness of any decision made by a Judge in any legal proceeding.¹²

[11] The Judge concluded that Mr Reihana's complaints to the Commissioner were direct challenges to the legality of the Associate Judge's directions, orders or decisions, and therefore fell squarely within s 8(2) of the Act.¹³ This finding rejected Mr Reihana's submission, as the Judge recorded it, that s 8(2) could not apply to directions, orders and decisions which the Associate Judge did not have jurisdiction to issue.¹⁴ The Commissioner was therefore bound to dismiss Mr Reihana's complaints under s 16. The Judge held that the Commissioner did not fail to take any relevant consideration into account. Nor did he make any jurisdictional error.¹⁵

[12] The Judge concluded that the Commissioner was bound to dismiss the complaint and accordingly declined the application for judicial review.¹⁶

Argument on appeal

[13] Mr Reihana submits the Judge mischaracterised his complaints to the Commissioner and did not determine his complaint that the Associate Judge presided over Mr Reihana's proceedings, when s 22(4)(h) of the Senior Courts Act prohibited an Associate Judge from doing so. Yet, Mr Reihana says, the unlawfulness was subsequently confirmed by Robinson J's minute and in an email minute of

¹⁰ At [8].

¹¹ At [8].

¹² At [9].

¹³ At [15].

¹⁴ At [16]–[17].

¹⁵ At [18]–[19].

¹⁶ At [19]–[20].

Associate Judge Lester, who recorded that Associate Judges had no jurisdiction to deal with any issue arising in Mr Reihana's judicial review proceedings and that an application for security and any subsequent applications would have to go before a Judge.¹⁷

[14] Mr Reihana maintains that Associate Judge Lester unlawfully presided over his judicial review proceedings, and that it was wholly within the Commissioner's jurisdiction to consider this complaint.

Decision

[15] Mr Reihana's written and oral submissions raise two issues. The first relates to the correctness or otherwise of the High Court's decision to decline his application for judicial review.

[16] The second raises the issue of whether an Associate Judge has the jurisdiction to make interlocutory directions, orders or decisions under r 2.1 of the High Court Rules 2016 in a judicial review proceeding.

Did the High Court err?

[17] We deal first with Mr Reihana's argument that his complaints to the Commissioner were mischaracterised by the Judge. Mr Reihana seeks to make a distinction between the action of the Associate Judge *presiding* over judicial review proceedings, which is unlawful, as opposed to the Associate Judge making minutes, orders or directions. This argument relies on the wording of s 8(2) of the Act:

It is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a Judge in relation to any legal proceedings.

[18] On that basis, Mr Reihana says s 8(2) is not a bar to the Commissioner's jurisdiction, because there is no lawful decision, direction or order, as the Associate Judge was presiding unlawfully.

¹⁷ *Reihana v Rakiura Titi Committee* HC Invercargill CIV-2016-425-15/16, 17 July 2024 [Robinson J minute] at [10]–[11]; and *Reihana v Rakiura Titi Committee* HC Invercargill CIV-2014-425-102, 1 August 2024 [email minute].

[19] We are unable to accept Mr Reihana’s submission, although carefully argued, as the distinction is artificial. When a judge presides over a court, the judge is exercising authority or control over the proceeding.¹⁸ That inherently involves the judge giving or making instructions, directions, orders or judgments. It follows that presiding over proceedings is inextricably linked with the giving or making of instructions, directions, orders or judgments in relation to those proceedings.

[20] We consider therefore, that there is no error in the Judge’s finding that the Commissioner does not have jurisdiction to assess the legality of an Associate Judge’s directions or minutes. Mr Reihana’s complaints to the Commissioner directly challenged the legality of Associate Judge Lester’s directions and timetabling orders. We agree with the Judge that they therefore fell squarely within s 8(2) of the Act.¹⁹

[21] In any event, even if s 8(2) was not engaged, s 16(1) of the Act required the Commissioner to dismiss the complaint if the Commissioner was of the opinion that:

- (a) the complaint is not within the Commissioner’s jurisdiction; or
- (b) the complaint has no bearing on judicial functions or judicial duties;
or
- (c) the requirements of sections 12 and 13 have not been met; or
- (d) the complaint is frivolous, vexatious, or not in good faith; or
- (e) the subject matter of the complaint is trivial; or
- (f) the complaint is about a judicial decision, or other judicial function, that is or was subject to a right of appeal or right to apply for judicial review; or
- (g) the person who is the subject of the complaint is no longer a Judge; or
- (h) the subject matter of the complaint was considered before the commencement of this section by the Head of Bench or the Judicial Complaints Lay Observer; or
- (i) he or she has previously considered the subject matter of the complaint, and the complaint fails to raise any issue of significance that he or she has not previously considered.

¹⁸ *Oxford English Dictionary* (online ed, Oxford University Press), definition of “preside”.

¹⁹ Judgment under appeal, above n 1, at [15].

[22] The Commissioner declined to deal with Mr Reihana's complaints under s 16(1).²⁰

[23] The Judge concluded the Commissioner was correct in finding that, under s 16(1)(a) of the Act, the complaints were not within his jurisdiction and, under s 16(1)(f), the complaints were about judicial decisions or other judicial functions that are or were subject to a right of appeal or a right to apply for judicial review.²¹

[24] We agree with the Judge that the Commissioner was bound to dismiss the complaints under s 16(1). He did not fail to take any relevant consideration into account, nor did he make a jurisdictional error.²²

[25] Mr Reihana has brought this appeal from his unsuccessful application for judicial review. We must therefore determine whether there has been any error on the part of the Judge in declining the application. We conclude that there has been no error and Mr Reihana's appeal is therefore dismissed. It is important to clarify that this aspect of the challenge to the Commissioner's jurisdiction is under the Judicial Conduct Commissioner and Judicial Conduct Panel Act, not the underlying issue of the Associate Judge's jurisdiction under the Senior Courts Act.

[26] While our conclusion determines Mr Reihana's appeal, we outline for completeness the issue underlying Mr Reihana's complaint to the Commissioner, namely, the jurisdiction of an Associate Judge to deal with judicial review proceedings. This also formed the basis of his submissions to us on appeal. We set out the issue below but do not determine it, as it requires a substantive determination by a court fully seized of it with input from a contradictor.

The jurisdiction of Associate Judges

[27] The jurisdiction of Associate Judges of the High Court is conferred by the Senior Courts Act and the High Court Rules, together with any other enactment

²⁰ At [4]–[5].

²¹ At [18].

²² At [18]–[19].

conferring such jurisdiction specifically on them.²³ In this case, the Associate Judge made directions and orders in case-managing Mr Reihana’s judicial review proceedings as a Judge in chambers dealing with interlocutory applications.

[28] Rule 2.1(1) of the High Court Rules confers the powers of a High Court Judge in chambers on an Associate Judge: “An Associate Judge has the jurisdiction and powers of a Judge in chambers conferred by the Act or these rules or another enactment.”

[29] The powers of a “Judge in chambers” includes the power to deal with most High Court interlocutory applications.²⁴ An interlocutory application is defined in s 4(1) of the Senior Courts Act in the following terms:

interlocutory application—

- (a) means any application to the High Court in any civil proceedings or criminal proceedings, or intended civil proceedings or intended criminal proceedings, for—
 - (i) an order or a direction relating to a matter of procedure; or
 - (ii) in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
- (b) includes an application to review an order made, or a direction given, on any application to which paragraph (a) applies.

[30] However, there are three key provisions under the Senior Courts Act defining the jurisdiction of Associate Judges. Section 20 prescribes that the Associate Judge may exercise certain powers of the High Court under specific statutory enactments and in relation to certain matters, such as summary judgment applications,²⁵ or certain proceedings under the Land Transfer Act 2017 relating to caveats.²⁶

[31] Under s 21(1), an Associate Judge has, in relation to a proceeding (including a proceeding on an interlocutory application) that is “properly before the Associate

²³ See also *Gatfield v Hinton* [2026] NZCA 17, where an Associate Judge was held to have jurisdiction to order mediation and arbitration on an interlocutory application under s 145 of the Trusts Act 2019.

²⁴ High Court Rules 2016, rr 7.4(8), 7.33(1) and 7.34(1).

²⁵ Senior Courts Act 2016, s 20(1)(a).

²⁶ Senior Courts Act 2016, s 20(1)(e).

Judge,” the same jurisdiction and power to make an order or exercise an authority as a Judge of the High Court. Importantly however, s 21(2) provides that despite subs (1), an Associate Judge does not have the jurisdiction or powers referred to in s 22(4).

[32] The governing provision is therefore s 22 of the Senior Courts Act, which defines the extent of the Associate Judges’ jurisdiction. Section 22(1) reinforces that the High Court Rules *may* confer on Associate Judges the jurisdiction and powers of a High Court Judge in chambers. It provides:²⁷

- (1) Rules made under section 148 [including the High Court Rules] and rules made under any other Act in the manner provided in that section *may* confer on an Associate Judge the jurisdiction and powers of a High Court Judge in chambers specified in the rules.

[33] However, s 22(4)(h) imposes limitations on the jurisdiction conferred by the High Court Rules including in respect of applications for judicial review:²⁸

- (4) Despite subsection (1), *no rules may be made* that confer on Associate Judges jurisdiction and power in relation to any of the following:
 - ...
 - (h) an application for review or other relief under the Judicial Review Procedure Act 2016:
 - ...

[34] As noted, Mr Reihana relies on s 22(4)(h) to submit that the Associate Judge had no jurisdiction to deal with any of his interlocutory applications in his three judicial review proceedings. Mr Reihana argues that, without jurisdiction, it was unlawful for the Associate Judge to preside over his proceedings. It is on that basis that he contends on appeal that his complaints to the Commissioner should have been upheld.

[35] On 17 July 2024, Robinson J made arrangements for a case management conference and recorded that Mr Reihana was correct to point out that s 22(4)(h) of the Senior Courts Act requires a judicial review proceeding to be case managed by a

²⁷ Emphasis added.

²⁸ Emphasis added.

Judge of the High Court rather than an Associate Judge.²⁹ He also referred to the relevant provisions of the Judicial Review Procedure Act being to the same effect.³⁰

[36] On 1 August 2024, Associate Judge Lester confirmed that Associate Judges had no jurisdiction to deal with any issues arising on the file, and the subsequent applications would have to go before a High Court Judge. He issued the following minute:³¹

Associate Judges have no jurisdiction to deal with any issue arising on this file.

The application for Security and any subsequent application will have to go before a Judge.

The hearing on 13 August 2024 will need to be adjourned to a Judge.

[37] A hearing was then allocated before a High Court Judge. Mr Reihana’s judicial review proceedings have not been case managed by an Associate Judge since 1 August 2024.

[38] Unsurprisingly, Mr Reihana relies on both of the above minutes of Robinson J and the Associate Judge in support of his position that there was no lawful basis for an Associate Judge to make any directions or orders in relation to his judicial review proceedings.

[39] As this issue is not the subject of the appeal before us, we are not in a position to make a determinative finding on the jurisdiction of Associate Judges without submissions from a contradictor outlining the policy and intent of s 22 of the Senior Courts Act and in particular s 22(4)(h). We make the following observations only.

²⁹ Robinson J minute, above n 17, at [10].

³⁰ At [10]. We note that “Judge” is defined under s 4 of the Judicial Review Procedure Act 2016 as a “Judge of the High Court”. Under s 13(1) of the Judicial Review Procedure Act, a Judge may direct that a case management conference be held. Per s 13(5), at the conference, the Judge may make any of the orders and directions specified in s 14. Under s 14(2), these orders and directions include directions and orders as to service, timetabling, discovery, production, interrogatories, further particulars, fixing a time for hearing of the application and any other necessary consequential directions.

³¹ Email minute, above n 17.

[40] We acknowledge that on a plain reading of s 22(4)(h), as Robinson J concluded,³² it appears that an Associate Judge may not have jurisdiction to make orders or directions on a chambers interlocutory application in judicial review proceedings.

[41] However, as noted, the issue has not been directly addressed by legal argument and we note that Robinson J, in his capacity as Duty Judge, dealt with the issue on the papers, but also without the benefit of full argument before him. As this is an important issue affecting the jurisdiction of Associate Judges, we have outlined the issue as it was presented to us, but signal that this is an issue that requires a determination when the matter is properly before a court and fully argued.

[42] We record that Mr Reihana presented a persuasive and cogent argument, relying on a number of authorities on the principles of judicial review, including the failure to take into account relevant considerations and jurisdictional errors,³³ but a substantive judicial review proceeding challenging the Associate Judge's directions is not before us.

[43] In addition, Mr Reihana cited several authorities on equity principles in support of his claim for remuneration, as "reasonable man's remuneration", for the work he put into his appeal. However, we decline to make any orders for remuneration, as the matter before us is not a private law claim, and his appeal on the issue before the Court has not succeeded.

[44] Following the hearing, Mr Reihana filed a memorandum seeking clarification about his entitlements to disbursements and expenses, if he were successful on appeal. As the appeal is unsuccessful, no costs, disbursements or expenses are payable to Mr Reihana. However, as the respondent abides the decision of the Court and no contradictor argument was presented, no order for costs is made against Mr Reihana.

³² Robinson J minute, above n 17.

³³ *Regina v Broadcasting Complaints Commission, Ex parte Owen* [1985] 1 QB 1153; *R v Rochdale Metropolitan Borough Council, ex parte Cromer Ring Mill Ltd* [1982] 3 All ER 761; *Hanks v Minister of Housing and Local Government* [1963] 1 QB 999 at 1020; and *R (on the application of ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 (Admin) at [99].

Result

[45] The appeal is dismissed.

[46] There is no order as to costs.