

STEP JOURNAL

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Pushing the boundaries

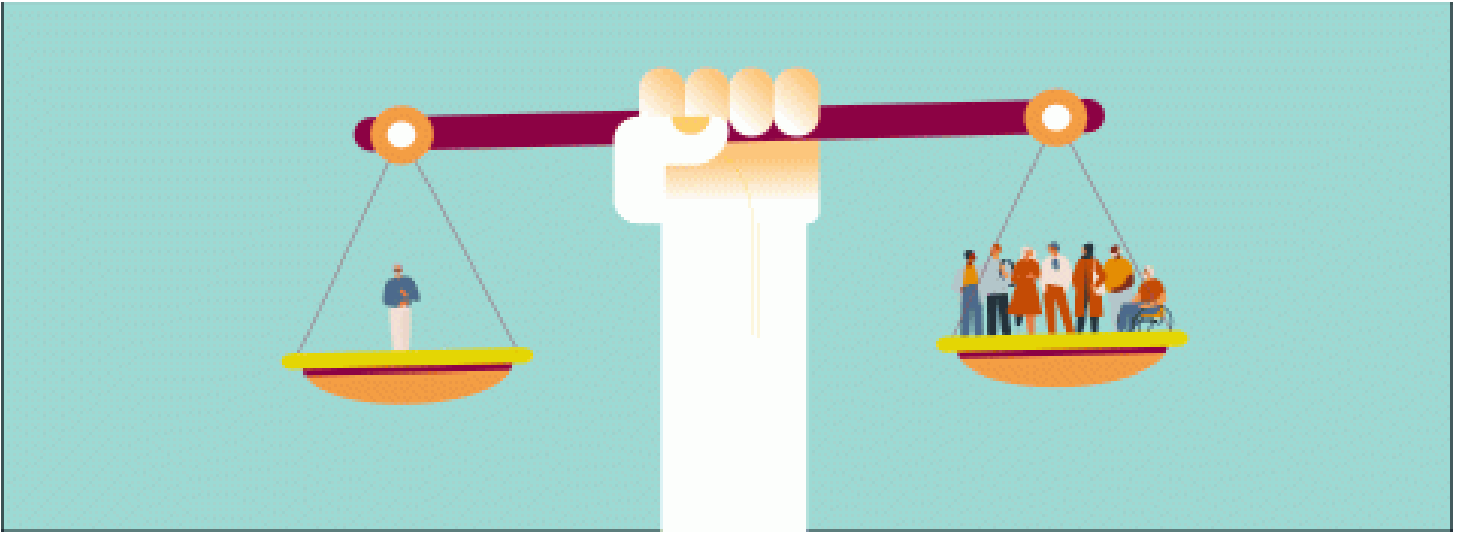
Polina Kozlova TEP considers a recent decision from the Supreme Court of New Zealand that confirms the boundaries of fiduciary duties and estate claims

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The Supreme Court of New Zealand (the Court) has issued a landmark decision dismissing an appeal by adult children against the trustees of the Z Trust (the Trust), to which their father transferred his assets prior to his death to ensure his estate was out of reach of his children.

The case, *A, B and C v D and E Limited as Trustees of the Z Trust*,^{[\[1\]](#)} which arose from shocking abuse by a father and a later dispute over his estate, highlights critical considerations in trust law and the limits of fiduciary obligations owed by parents to adult children in the context of the New Zealand legal system.

Background

The appellants, who were three adult children, suffered significant abuse at the hands of their father during their childhood. Years later, their father transferred nearly all his assets, including a home and shares worth approximately NZD700,000, to the Trust. The appellants were excluded as beneficiaries, with the trust's primary beneficiaries being members of the father's new family.

When the father passed away, his remaining estate was valued at just NZD47,000. The children sought to claim under the *Family Protection Act 1955* (the Act), but this required the Trust assets to be returned to the estate. They argued that the transfers breached a fiduciary duty that was still owed to them, given the enduring harm caused by their father's actions.

Lower court decisions

Initially, the High Court of New Zealand (the High Court) ruled in the children's favour. It recognised that although the relationship of an adult children to their parent is usually of a non-fiduciary

nature, in this particular case, the fiduciary relationship continued into the children's adulthood because the father's abuse left them vulnerable.

The Court of Appeal of New Zealand (the Court of Appeal) reversed the High Court's decision, concluding the father's fiduciary obligations to the children did not continue into adulthood because there was no longer a relationship of trust.

The Court's analysis

The Court affirmed the Court of Appeal's decision, emphasising the following principles:

- Fiduciary duties arise in relationships where trust and confidence are inherent, such as parent-child relationships during childhood. However, these duties generally cease once caregiving responsibilities end, such as when children reach adulthood or leave home.
- The Court rejected the argument that fiduciary duties could be extended indefinitely based on past abuse or harm. The judges noted that although the abuse caused enduring harm, the law does not impose a fiduciary obligation on parents to provide economic support or estate benefits to adult children.
- The father's actions in transferring assets to the Trust were lawful, despite their moral implications. As the assets were legally his to dispose of, the trustees of the Trust were under no obligation to consider the appellants' interests.

Impact on the Act

The Court also addressed the appellants' claims under the Act, which aims to ensure adequate provision for family members from an estate. Without anti-avoidance provisions, such as those found in some overseas jurisdictions, the Act could not unwind lawful transfers made to trusts before death. The Court suggested that legislative reform might address such gaps in future cases.

A broader perspective

Tikanga Māori principles, including concepts like *whanaungatanga* (relationships) and *ea* (restoration of balance), were raised as part of the appellants' argument.^{[\[2\]](#)} Although the Court acknowledged these principles, it found that:

‘implementing such concepts would require a reworking of the fundamental concepts in the fiduciary relationships which is disconnected from their doctrinal underpinnings and would be incautious, creating great uncertainty in the law’.

This observation was made by the Court in the context of the fact that the case is not one where the law had no ability to respond to the claims, as claims were available to the appellants (at the time the abuse took place), but were not pursued.

The judgment stressed that fiduciary law must remain consistent and predictable, avoiding ad hoc extensions based on past wrongs or moral arguments.

Conclusion

This case underscores the importance of proactive estate planning and the potential consequences of asset-protection mechanisms like trusts. For those seeking claims against estates, it also highlights the necessity of acting promptly, as legal remedies may become unavailable with time or improper structuring of assets.

Families with complex dynamics, especially where harm or estrangement is involved, should be encouraged to seek expert legal advice to ensure fair outcomes while respecting the boundaries of existing legal frameworks.

[1] [2024] NZSC 61

[2] For more on this case and *tikanga* principles, read Isaac Hikaka TEP’s article, ‘[Weaving old into new](#)’, *Trust Quarterly Review*, December 2024.