

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 9/2019  
[2019] NZSC 24

BETWEEN JENNY LYN WALKER  
Applicant

AND NELSON DISTRICT COURT  
First Respondent

NELSON CITY COUNCIL  
Second Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicant in person  
No appearance for First Respondent  
K E Mitchell for Second Respondent

Judgment: 11 March 2019

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**JUDGMENT OF THE COURT**

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- A The applications for a stay and for leave to appeal are dismissed.**
- B The applicant must pay the second respondent costs of \$2,500.**
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**REASONS**

**Introduction**

[1] Ms Walker seeks leave to appeal from a decision of Clifford J in the Court of Appeal declining an application for review of the Deputy Registrar's decision refusing

to dispense with security for costs.<sup>1</sup> She also seeks a stay of enforcement of financial penalties imposed in the District Court pending appeal.

## **Background**

[2] The application for leave to appeal is set against the background of Ms Walker's conviction, on 24 March 2017, of a charge of owning a dog that had attacked a person under s 57(2) of the Dog Control Act 1996.<sup>2</sup> On the same day, she was fined \$550 and ordered to pay \$500 in emotional harm reparation to the victim of the dog's attack.<sup>3</sup> The District Court Judge also ordered the dog to be destroyed.<sup>4</sup> She appealed unsuccessfully to the High Court against conviction and against the destruction order.<sup>5</sup> The Court of Appeal declined to grant leave for a second appeal.<sup>6</sup> An application to appeal to this Court was not accepted on the basis of lack of jurisdiction in reliance on s 213(3) of the Criminal Procedure Act 2011.

[3] Ms Walker then filed judicial review proceedings. In those proceedings, amongst other matters, she sought declarations her conviction and the destruction order be set aside. In terms of the conviction she contends the Courts misinterpreted s 57 as a strict liability offence. Cooke J struck out the judicial review proceedings on the basis they were res judicata because the issue she wished to raise had already been finally determined by the District Court and on appeal.<sup>7</sup>

[4] Ms Walker then appealed to the Court of Appeal. Security for costs in the sum of \$6,600 was set in relation to that appeal. Ms Walker applied unsuccessfully for dispensation and then sought a review of that decision. As we have noted, Clifford J declined the application for review.

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<sup>1</sup> *Walker v Nelson District Court* [2018] NZCA 550.

<sup>2</sup> *Nelson City Council v Walker* [2017] NZDC 7142.

<sup>3</sup> *Nelson City Council v Walker* [2017] NZDC 6372.

<sup>4</sup> That has now occurred.

<sup>5</sup> *Walker v Nelson City Council* [2017] NZHC 750.

<sup>6</sup> *Walker v Nelson City Council* [2017] NZCA 526.

<sup>7</sup> *Walker v Nelson District Court* [2018] NZHC 1967, [2018] NZAR 1454.

## **The proposed appeal**

[5] Ms Walker's submissions focus on the merits of the decision to strike out the judicial review proceedings and on the impact of what she considers were inadequacies in the approach taken by her lawyer in the appeals relating to her conviction and sentence. In addition, Ms Walker submits the question of whether s 57 imposes strict liability is an issue of public importance justifying the grant of leave.

[6] There is no challenge to the principles relating to dispensation with security for costs. The principles applicable to security for costs were set out in *Reekie v Attorney-General* and were applied in this case.<sup>8</sup> No question of general or public importance accordingly arises out of the approach to security for costs and there likewise is no appearance of a miscarriage of justice.<sup>9</sup>

[7] The application for leave to appeal is dismissed. There is accordingly no basis to grant the stay sought. The application for a stay is formally dismissed.

[8] The applicant is to pay costs of \$2,500 to the second respondent.

Solicitors:  
Tasman Law Ltd, Nelson for Second Respondent

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<sup>8</sup> *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

<sup>9</sup> *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]. The appeal to the Court of Appeal was deemed abandoned as at 28 November 2018.