



MEDIA RELEASE

Borrowdale v DIRECTOR GENERAL OF HEALTH

CIV-2020-485-194

CASE SYNOPSIS

The purpose of this synopsis is to provide background information to assist in understanding the issues to be heard by the Court. It does not represent the views of the panel that will hear the application in the High Court. Given the breadth and complexity of the issues raised in the proceeding it involves some simplification and addresses only the major points in issue.

Background

Mr Borrowdale has brought judicial review proceedings challenging the legality of restrictions imposed by the New Zealand Government on the public in response to the COVID-19 pandemic. The first respondent is the Director-General of Health and the second respondent is the Attorney-General. The Court has granted leave for the New Zealand Law Society to be represented as intervener, a disinterested party whose role is to assist the court.¹

The nature of the hearing

The role of the Court in judicial review proceedings is of a supervisory nature. It is concerned with ensuring powers are exercised in accordance with the law. In undertaking this important constitutional function, the Court does not engage in nor provide answers to political, social or economic questions. It is concerned only with assessing whether powers were exercised lawfully.

One judge usually presides over High Court proceedings. However, there is provision for the High Court to sit as a full Court (2 or 3 judges) in cases of particular significance, such as this one. Three judges will preside over this case, including the Chief High Court Judge Justice Thomas.

¹ [Borrowdale v Director General of Health 18 June 2020](#)

Grounds of review

There are three grounds of review.

The first is in the context of the New Zealand Bill of Rights Act 1990 (NZBORA) and the Bill of Rights 1688, an Act which establishes the principle that no law can be suspended without the consent of Parliament.

This ground of review concerns the announcements made by the Prime Minister and others in Government from Monday 23 March 2020. Mr Borrowdale claims these announcements gave directions requiring, as from 11:59 pm on 25 March, people to confine themselves to their homes for all non-essential purposes, all non-essential businesses to close and public congregations, indoor and outdoor events to cease. Mr Borrowdale's case is that these directions were unlawful because they were not imposed by law and they limited the public's rights affirmed in the NZBORA.

Additionally, Mr Borrowdale claims the restrictions appeared to suspend the law, and were accordingly illegal under the Bill of Rights 1688.

The second ground of review concerns the powers of the Director-General of Health to make orders pursuant to s 70(1)(m) and (f) of the Health Act 1956. Mr Borrowdale claims that the Director-General of Health did not have the power to close all businesses generally and confine the entire population of New Zealand to their places of residence.

The third ground of review relates to the legality of the claimed delegation to the Ministry of Business, Innovation and Employment in administering a scheme for determining what was an essential service during the period New Zealand was placed under Alert Levels 3 and 4. Mr Borrowdale claims the delegation was unlawful for lack of compliance with section 41 of the State Sector Act 1988.

Hearing details

The case is set down for three days in the Wellington High Court, commencing Monday 27 July 2020.

Provision will be made for members of the public and interested parties who are unable to be accommodated in the court to view in an adjoining courtroom if required.

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