

IN THE SUPREME COURT OF NEW ZEALAND

**SC 14/2012
[2012] NZSC 37**

BETWEEN VINCENT ROSS SIEMER
Applicant

AND SOLICITOR-GENERAL OF NEW
ZEALAND
Respondent

SC 15/2012

BETWEEN VINCENT ROSS SIEMER
Applicant

AND CHIEF JUSTICE OF NEW ZEALAND
First Respondent

AND THE ATTORNEY-GENERAL OF NEW
ZEALAND
Second Respondent

Court: Blanchard and William Young JJ

Counsel: Applicant in Person
A M Powell for Respondents

Judgment: 15 May 2012

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed, with costs reserved.

REASONS

[1] The applicant is in both these applications seeking leave to appeal to this Court against an order made by Arnold J in the Court of Appeal declining to review

decisions of the Acting Registrar of that Court to fix security for costs of \$5,560 in respect of each appeal to that Court.¹

[2] Mr Siemer asserts that r 35 of the Court of Appeal (Civil) Rules 2005, under which the Acting Registrar and Arnold J acted, is impermissibly broad and uncertain in its application and thus is inconsistent with the New Zealand Bill of Rights Act 1990 and art 14 of the International Covenant on Civil and Political Rights because its exercise restricts or prevents access to justice. Although not precisely stated in this way, the proposed argument must be that the rule is therefore ultra vires the rulemaking power in the Judicature Act 1908 when read consistently with those instruments,² and in particular s 27(2) of the Bill of Rights, which for present purposes can be assumed to extend to first appeals in civil proceedings.

[3] As the judgments below recognise, there are, however, long-established principles in accordance with which security for costs is fixed or dispensed with under a rule of this kind and which also guide the review of a registrar's decision by a judge. The words of the rule do not stand by themselves. In light of the established principles, the argument that the rule is overbroad or uncertain in its application must fail. The rule, which is of a kind commonly found in comparable jurisdictions, is plainly a reasonable limit in terms of s 5 of the Bill of Rights. Section 66 of the Judicature Act expressly provides for the making of rules under the Act for regulating the terms and conditions on which appeals are allowed (that is, permitted). A rule concerned with security for costs is, unarguably, a regulating provision.

[4] Arnold J conducted his review in accordance with principle and reached a conclusion which cannot be said to be in error. Accordingly the criteria for an appeal to this Court are not met.

Solicitors:
Crown Law Office, Wellington

¹ *Siemer v Solicitor-General* [2012] NZCA 68.

² See *Drew v Attorney-General* [2002] 1 NZLR 58 (CA) at [68].