IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA192/2021
[2021] NZCA 353

BETWEEN	THE DISTRICT COURT AT CHRISTCHURCH Appellant
AND	CRAIG LEE MCDONALD Respondent

CA321/2021

BETWEEN	CRAIG LEE MCDONALD Appellant
AND	THE DISTRICT COURT AT CHRISTCHURCH Respondent

Hearing:	8 June 2021
Court:	Kós P, Miller and Cooper JJ
Counsel:	V L Hardy, D L Harris and C P C Wrightson for District Court A J Bailey and R J T George for Mr McDonald
Judgment:	29 July 2021 at 10 am

JUDGMENT OF THE COURT

A The appeal by the District Court in CA192/2021 is allowed.

B The declaration made at [50] of the High Court judgment is set aside.

C The appeal as to costs by Mr McDonald in CA321/2021 is dismissed.

D There are no orders for costs.

REASONS OF THE COURT

(Given by Kós P)

[1] By statute, District Court registrars may grant or vary bail where the prosecutor agrees. Registrars frequently deal with unopposed bail applications.

[2] But two directions were then made by judges to whom particular responsibilities had been delegated by the Chief District Court Judge. The first direction precluded registrars granting bail to any defendant charged with a family violence offence. The second precluded registrars in the Christchurch district considering bail variation applications for any defendant charged with a family violence offence.

[3] The effect of these directions was not to deny bail in such circumstances, but sometimes to delay it — such applications having instead to be listed before a judge.

[4] Dunningham J set those directions aside on an application for judicial review by Mr McDonald.[1] Mr McDonald's bail application, to which the police consented, had to be referred to a judge. Although bail was granted, Mr McDonald's release was delayed at least 30 minutes; he was represented by a duty solicitor rather than his own lawyer (who was no longer available) and the Judge imposed an additional reporting condition which Mr McDonald found inconvenient.[2] Dunningham J refused to award Mr McDonald costs in a second, separate judgment.[3]

[5] The District Court at Christchurch appeals the former decision, Mr McDonald the latter.

[6] We consider the Judge erred in setting the directions aside. We now explain why.

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1 *McDonald v The District Court at Christchurch* [2021] NZHC 446 [High Court judgment].
2 A subsequent appeal against that condition succeeded.
3 *McDonald v The District Court at Christchurch* [2021] NZHC 1289 [Costs judgment].

Background

[7] In 2014, the then-Chief Judge gave Judge Walker responsibility for leading the District Court's response to family violence.[4] As part of his work, Judge Walker became aware registrars in many courts routinely granted unopposed bail in family violence cases with little information before them apart from the charging document. Judge Walker states in an affidavit:

> 4. I have worked closely with the Police in the development of a risk assessment tool for family violence cases, the interface between Integrated Safety Response teams and the courts and the complainant video evidence project, and the issues surrounding electronically monitored bail in family violence cases.
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> 5. In 2014, in the context of this work, I became aware that a person convicted of murder of his wife was at the time of the offence on bail in relation to a family violence charge where his wife was the alleged victim. Bail had been granted by a Justice of the Peace and renewed by a Judge when he appeared on a breach of that bail. On each of those appearances bail had not been opposed by Police.
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> 6. I carried out a detailed review of that case to see what lessons could be learned. It became apparent that because bail had not been opposed, no information about the alleged facts, the defendant's history, or the victim's circumstances were placed before the court. It also became apparent that this was not an unusual situation. I also became aware that Registrars in many courts were routinely granting bail in family violence cases when bail was unopposed and with little or any information other than the charging document.
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> 7. It also became clear that a great deal of information had been available within the Police system in relation to the offender in that case, including a previous family violence conviction, Police call outs, suicidal ideation, and the victim approaching Women's Refuge for help. Information highly relevant to the assessment of risk which the defendant posed was available to the system, but not available in court.

[8] A system for collecting and reporting a wider range of information in relation to applications for bail on family violence charges was developed. That information includes the charging documents, summary of alleged facts, previous criminal history, previous bail history, and details of the following: all police family violence call-outs

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[4] Judge Walker subsequently was appointed Principal Youth Court Judge.

involving the applicant, all protection orders issued against the applicant, all breaches thereof, all police safety orders issued and all breaches thereof.

[9] These reports are called Family Violence Bail Reports (FVBRs). In 2015, FVBRs were trialled in the District Courts at Porirua and Christchurch. As part of the FVBR methodology, in 2015 Judge Walker decided all family violence bail applications should be decided by judges rather than registrars. At least in part, that decision was made on the basis that registrars had not had education in family violence bail risk assessment. A direction to that effect was communicated to registry staff. It was also included in guidance material for registry staff prepared by the Ministry of Justice. That was the first direction. Since 2020, FVBRs have been adopted in all District Courts, and the direction applies in all cases. The first direction therefore has national effect.

[10] Subsequently a question arose whether registry staff should be dealing with unopposed bail variation applications on family violence charges. In 2018 the Executive Judge at Christchurch, Judge O'Driscoll, directed that such applications should only be determined by a judicial officer. That was the second direction. It has effect only in the Christchurch district.

Statutory context

[11] Section 20 of the District Court Act 2016 provides:

> **20 Exercise of jurisdiction**
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> The jurisdiction of the court may be exercised by—
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> (a) a Judge; or
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> (b) if authorised by this Act or any other Act or by the rules, a Registrar or any person authorised to carry out the functions of a Registrar.

[12] Section 20(b) applies potentially because provisions in both the Criminal Procedure Act 2011 and the Bail Act 2000 permit registrars, in limited circumstances, to make decisions on bail.

[13] Section 168(1) of the Criminal Procedure Act provides that a judicial officer or registrar, in accordance with any applicable provisions of the Bail Act, may allow the defendant to go at large, grant the defendant bail under that Act or, if the defendant is liable on conviction to a sentence of imprisonment or if the defendant has been arrested, remand the defendant in custody.[5]

[14] Section 27(1) of the Bail Act provides that a judicial officer may grant a defendant bail under s 168, and by s 27(2), a registrar may exercise the power to grant bail "if the prosecutor agrees". Section 33(5) likewise enables registrars to exercise the power to make orders varying or revoking any condition of bail or substituting or imposing any other condition of bail "if … the prosecutor agrees". In addition, s 30AAA of the Bail Act (which was inserted by s 11 of the Family Violence (Amendments) Act 2018) gives powers to impose conditions on bail to any judicial officer or registrar who grants bail to the extent necessary to protect the victim of the alleged offence and any person residing with or in a family relationship with the victim. Bail applications for persons charged with serious offending (including sexual violation, homicide related charges and wounding or injuring with intent) must be dealt with by a judge (in the District or High Court) if the defendant has a prior such conviction.[6]

[15] Finally, s 24(3) of the District Court Act provides:

> (3) The Chief District Court Judge must ensure the orderly and efficient conduct of the court's business and, for that purpose, may, among other things,—
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> (a) determine the sessions of the court; and
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> (b) assign Judges to those sessions; and
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> (c) assign Judges to particular divisions or jurisdictions; and
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> (d) assign Judges to the hearing of cases and other duties; and
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> (e) determine the places and schedules of sessions for individual Judges (including varying the places and schedules of sessions for Judges from time to time); and

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5 "Judicial officer" means a High Court or District Court Judge, Community Magistrate or Justice of the Peace: Criminal Procedure Act 2011, s 5.

6 Bail Act 2000, s 10(3).

(f) manage the workload of individual Judges; and

(g) delegate administrative duties to individual Judges; and

(h) oversee and promote the professional development, continuing education, and training of Judges; and

(i) make directions and set standards for best practice and procedure in the court.

[16] It should however be borne in mind that judicial powers of direction are not necessarily to be found in statutory provisions alone. We return to this point at [27] below.

Judgment appealed

[17] The Judge looked first at how the directions were made, and whether they were authorised or endorsed by the Chief Judge. The Judge considered the evidence "was lacking" on both points.[7] The Chief Judge had requested Judge Walker review the Court's practices with respect to family violence. The evidence did not however show he was delegated power to make decisions under s 24 of the District Court Act. Nor did it show how the decision to remove responsibility for determining unopposed bail applications for family violence charges from registrars was made.[8]

[18] The Judge found the link to s 24 was more tenuous still in relation to the second direction. This was made at a local level within the Christchurch District Court. As the Judge noted, it may have always been intended as part of the first direction. Or the Christchurch District Court judges may have considered it an appropriate additional direction.[9]

[19] The Judge concluded she did not have sufficient evidence to confirm either direction was made pursuant to s 24(3)(i).[10]

[20] The Judge then considered whether the directions could lawfully have been made at all under s 24(3). The Chief Judge could delegate the task of developing better

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7 High Court judgment, above n 1, at [38].
8 At [38].
9 At [39].
10 At [39].

procedures for the hearing of family violence charges under s 24(3)(g) and to ensure judges received appropriate training under s 24(3)(h).[11] But the Judge considered s 24(3)(i) did not extend to making directions that judicial officers only should hear bail applications involving family violence charges in the face of registrars' statutory powers to determine such applications.[12]

[21] The Judge considered the power to make directions as to best practice must be exercised consistently with statutes governing the practice and procedure of the Court. Section 20(b) of the District Court Act, s 27(2) of the Bail Act and ss 168(1) and 168A[13] of the Criminal Procedure Act gave registrars authority to make decisions on unopposed family violence bail applications. The Judge observed, "[t]hat authority cannot be removed by direction or decision made under s 24(3)(i)".[14]

[22] The Judge did not consider the directions analogous to the allocation of work to either judicial officers or registrars on different days during the week. That sort of decision was for administrative convenience. These directions had the practical effect of determining that registrars must not grant bail applications on family violence charges. Judge Walker decided registrars "ought not to do that work". That, the Judge said, was contrary to Parliament's decision to give registrars those powers.[15]

[23] The Judge considered there were other available options to ensure risks were appropriately recognised. Registrars could be encouraged to refer applications causing them concern to a judge. Registrars could be given appropriate training. Amendments to jurisdiction for family violence bail provisions could have been sought as part of the Family Violence (Amendments) Act 2018.[16] A declaration was made that the two directions were unlawful.

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11 At [42].
12 At [43].
13 Providing for the imposition of no-contact conditions by a judicial officer or, if the prosecutor agrees, a registrar where a defendant is charged with family violence offending and is remanded in custody.
14 At [44].
15 At [45].
16 At [46].

Appeal

[24] Having assumed the role of contradictor before the High Court, the District Court (represented by Ms Hardy, Deputy Solicitor-General) submits that the Judge erred in characterising the directions, read s 24 too narrowly and did not take sufficient account of the inherent powers of the District Court, the entire relationship between judges and registrars and the independence of the judiciary.

[25] For Mr McDonald, Mr Bailey sought to uphold the reasoning of the High Court Judge, essentially for the reasons given by the Judge. The District Court had not relied on inherent jurisdiction in argument before the High Court, but now did before us. The statute conferred jurisdiction on registrars; the directions sought to remove that statutory jurisdiction. It was inconsistent with the statute and impermissible. The relevant provisions provided a registrar "may" grant bail. The directions had the practical effect of "amending the legislation" to provide that a registrar "must not" grant bail in family violence proceedings. In Mr Bailey's submission, implied powers could not extend that far.

Discussion

[26] We will start with the general — whether power exists to make either direction — and move then to the specific — whether the power was exercised lawfully in each instance.

Power to supervise and direct registrars

[27] Intrinsic to the jurisdiction of a court — whether senior or district — are inherent powers, auxiliary to the jurisdiction itself, enabling the development of procedures to facilitate that jurisdiction.[17] As the Supreme Court has observed, every court has inherent powers which are incidental or ancillary to its jurisdiction, whether that jurisdiction itself is inherent or statutory.[18] Inherent powers do not exist at large; they arise as necessary to enable a court to function effectively as a court of

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17 See Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 901; and *Siemer v Solicitor-General* [2013] NZSC 68, [2013] 3 NZLR 441 at [113].

18 *Siemer v Solicitor-General*, above n 17, at [113].

judicature.[19] The best-known example of inherent judicial powers is the making of practice directions, which are seldom underpinned by statute.[20] Other examples include correction of the court's record,[21] the control of solicitors[22] and the reinstatement of improperly abandoned appeals.[23]

[28] A distinction between inherent jurisdiction (which has a substantive quality), and inherent powers (which are parasitic to, and support, jurisdiction, either inherent or statutory) is needed.[24] The Supreme Court made this point in *Zaoui v Attorney-General*:[25]

> Some confusion may arise because the term "inherent jurisdiction" is applied both to substantive and procedural powers. The ancillary inherent powers of Courts to regulate their own procedure arise equally in relation to their statutory and common law substantive jurisdictions. Courts which do not possess an inherent substantive jurisdiction (as is the case where their substantive powers are entirely statutory) nevertheless have inherent or implied procedural powers necessary to enable them to give effect to their statutory substantive jurisdiction.

[29] Where inherent powers arise from and support a statutory jurisdiction, such as that of the District Court, those powers must arise by necessary implication.[26] It is tempting to describe such powers as "implied", rather than "inherent", but the latter usage is firmly established in relation to powers derivative from both inherent and statutory jurisdiction. A distinction between jurisdictional source of inherent powers is seldom needed; in each case the power exists only where necessary to give effect to the substantive jurisdiction. Necessity being the foundation of the power, the form such powers take is likely to be similar, regardless of jurisdictional source.

[30] In the case of statutory jurisdictions, such as the District Court, Parliament may be taken to have intended the court to be able to work effectively. Necessarily, the

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19 At [114].
20 I H Jacob "The Inherent Jurisdiction of the Court" (1970) 23 CLP 23 at 34–37.
21 *Re Swire* (1885) 30 Ch D 239 (CA).
22 *Harley v McDonald* [2001] UKPC 18, [2002] 1 NZLR 1 at [45]; and *Black v Taylor* [1993] 3 NZLR 403 (CA) at 408–409.
23 *Ben View Farms Ltd v GE Capital Returnable Packaging Systems Ltd* [2002] 1 NZLR 698 (HC).
24 See for example Rosara Joseph "Inherent Jurisdiction and Inherent Powers in New Zealand" (2005) 11 Canta LR 220; and Marcelo Rodriguez Ferrere "The Inherent Jurisdiction and its Limits" (2013) 13 Otago LR 107.
25 *Zaoui v Attorney-General* [2005] 1 NZLR 577 (SC) at [35].
26 *McMenamin v Attorney-General* [1985] 2 NZLR 274 (CA) at 276.

constituting statute cannot express all powers necessary for the court and its judges to work effectively. Some powers are implied (or inherent) in the statutory framework of the court. Of course, some powers that would otherwise be inherent may find statutory expression. That expression may also enlarge powers otherwise inherent. But the more important question here is whether statute has constrained powers otherwise inherent. As Professor Joseph has said, the general law — including statutes of general or specific application or rules of court made under statutory authority — may circumscribe inherent powers:[27]

> But a statute or rule must manifest a clear intention to oust an inherent power. The courts may exercise their inherent powers "even in respect of matters … regulated by statute or the rules of Court, providing, of course that the exercise of the power does not contravene any statutory provision". A statutory power or rule of court that overlaps the court's inherent power – if it does not specifically override or restrict it – may leave untouched the inherent power.

The principles just discussed are too well established to require further elaboration here.

[31] The broadest realm of inherent judicial power likely lies in a court's power to regulate its own procedures.[28] And a fundamental aspect of that power is the judicial supervision and direction of registry staff in relation to the business of the court. A registrar is an "officer of the Court … acting sometimes ministerially and other times judicially" for and by the authority of the court.[29] Subject only to statutory constraint, it is of essence of a court that in the conduct of judicial business, its registrars are subject to judicial direction and their decisions are subject to judicial oversight and review. That principle was made clear by the Supreme Court in *Greer v Smith*:[30]

> The Act and Rules are not exhaustive of the relationship between the Judges and the Registrar. The Court consists of the Judges and the Registrar is an officer of the Court. It is implicit in this, and consistent with the inherent

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27 Joseph, above n 17, at 904–905, quoting *Taylor v Attorney-General* [1975] 2 NZLR 675 (CA) at 680.

28 *Attorney-General v Otahuhu District Court* [2001] 3 NZLR 740 (CA) at [16]; and *Hirstich v Family Court at Manukau* [2014] NZCA 305, [2015] NZFLR 317 at [23] and [27].

29 *Hart v Grace* [1968] NZLR 53 (SC) at 55, quoting *Lewis v McFarlane* (1874) 2 NZ Jur 1 (SC) at 4. As to judicial functions performed by registrars, see generally *Thompson v Attorney-General* [2016] NZCA 215, [2016] 3 NZLR 206; and *Crispin v Registrar of the District Court* [1986] 2 NZLR 246 (HC).

30 *Greer v Smith* [2015] NZSC 196, (2015) 22 PRNZ 785 at [6].

> powers of the Judges of any court, that the Judges have the general right to direct and supervise the Registrar in relation to the business of the Court providing such direction and supervision is not inconsistent with the scheme of the Act and Rules.

[32] It finds expression also in principle 3.1 of the Statement of Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts, which gives definition to the relative and shared responsibilities of the judiciary and the executive in courts management. It states:[31]

> The judiciary's responsibilities in relation to conducting the business of the courts include:
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> a) the scheduling of sittings of the court, the assignment of judges and judicial officers, and the listing of cases and applications (including those for alternative dispute resolution);
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> …
>
> c) the direction and supervision of Registry staff in relation to the business of the court;
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> …

[33] The same inherent power of supervision also enables judges to review the decisions of registrars where challenged, in the absence of a statutory basis for review.[32] For instance, in *Re Tupou* Edwards J relied on inherent power to review the decision of a registrar not to waive a $30 fee charged to the news media for access to a court file.[33] The relevant regulatory framework made no express provision for review of a registrar's decision on fee waiver.

[34] Necessarily, the original jurisdiction of District Court registrars, when acting judicially, must lie in statute or in rules made under a statute.[34] But the proper focus required here is not on the *fact* of their statutory jurisdiction. It is on its *extent*. What has been overlooked inadvertently below is the inherent power of judges to supervise and direct registrars in relation to judicial business. It appears the argument in the

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31 "Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts" (29 November 2018) Ngā Kōti o Aotearoa Courts of New Zealand < www.courtsofnz.govt.nz> at [3.1].

32 *Siemer v Deputy Registrar of the Supreme Court of New Zealand* [2020] NZSC 135 at [9].

33 *Re Tupou* [2018] NZHC 637 at [12].

34 District Court Act 2016, s 20(b): see [11] above.

High Court did not focus on inherent jurisdiction, as Mr Bailey now complains .[35] But that does not mean we can ignore it here; the legality of these directions cannot be resolved as if a pleading issue between private litigants. The relevant and correct question now to be asked is not whether statute has conferred judicial powers upon the registrars. Rather, it is whether statute has clearly ousted those inherent supervisory powers from the judges, so that the directions in issue here would be inconsistent with the statutory framework.

[35] We cannot find in any of the statutory provisions referred to at [11]–[15] above any ouster of the judges' powers of direction of registrars in the conduct of judicial business. The criminal legislation does not assist; it is conferring, but not limiting.[36] The restrictive wording in s 10(3) of the Bail Act does not cover the field; it does not oust inherent power and preclude a similar restriction being imposed by direction in other contexts.[37] Section 24(3) of the District Court Act empowers the Chief Judge, but it is certainly not an exclusive statement of the Chief Judge's powers, let alone those of judges of that Court generally.

[36] As to the former — the Chief Judge — it proceeds, "and, for that purpose, may, among other things".[38] That reflects the reality that the Chief Judge's powers are not stated exclusively by the statute; inherent powers remain. Section 24(3)(d) provides that the Chief Judge may assign Judges to the hearing of cases and other duties. That concerns exercise of jurisdiction, not the fact of jurisdiction. The fact a judge holds jurisdiction does not mean he or she may insist on sitting on any particular case. That section says nothing as to the assignment of registrars to hear cases, yet it cannot be doubted the Chief Judge has the power of assignment in relation to registrars also. The source thereof lies in the inherent (implied, if you like) power to supervise registrars in the conduct of judicial business. Section 24(3)(g) provides expressly for delegation of administrative duties to individual judges, and s 24(3)(i) for the making of directions for best practice and procedure. Were those powers not expressed in

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35 High Court judgment, above n 1, at [33]–[37].

36 That is, it clearly confers jurisdiction on the registrars. But that is not the point of focus: see [34] above. For a similar analysis of legislation as enabling, not excluding inherent power, see the decision of this Court in *Taylor v Attorney-General*, above n 27, at 680 and 687–688.

37 See [14] above.

38 See [15] above.

the Act, they would exist anyway, by necessary implication. The Chief Judge, first among 181 District Court Judges, is not expected to administer the Court alone and without assistance from his or her colleagues. The Chief Judge is by statute head of that Court, and responsible for its orderly and efficient conduct.[39] Inherent in that appointment is the power to allocate responsibility for the exercise of jurisdiction among judges and registrars, by direction or by delegation to particular judges of that Court. That power is confirmed, but not circumscribed, by the overlapping power conferred in s 24(3)(g) of the Act.

[37] As to the latter — judges generally — s 19(1)(a) of the Act provides each judge has the power "to exercise the civil and criminal jurisdiction of the court in accordance with his or her warrant of appointment". That states a judge's statutory jurisdiction in very broad terms. But it neither expresses a judge's inherent powers, nor limits them. In particular, nothing in the Act limits the inherent power of the Chief Judge or any other District Court judge to supervise and direct registrars in the conduct of judicial business. The conferral of jurisdiction on registrars creates no reasonable expectation, on the part of either registrars or litigants, that they are to exercise those powers unsupervised, or undirected, by judges.

[38] Nothing said here would surprise the Parliament that enacted the legislation giving registrars jurisdiction to deal with unopposed bail applications. For example, in the debate on the report back of the select committee considering the Courts and Criminal Procedure (Miscellaneous Provisions) Bill 1995, Judith Tizard MP observed:[40]

> Allowing registrars to make decisions, particularly in the bail area, I think is a big advance. Bail will be granted by registrars only where that bail is unopposed, and, of course, the vast majority of bail applications are unopposed: when the police are not opposed to it, when the victim—if there is a victim—of the alleged crime is not opposed to it or does not feel afraid. But I want to assure people that where there is concern at this level then it will immediately go to a judge who will make a proper decision.

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39 District Court Act, s 24(2) and (3).
40 (28 November 1995) 551 NZPD 10175.

In other words, Parliament's expectation was that while registrars would assist judges by determining some bail applications, that undertaking would remain subject to usual judicial oversight and supervision.

Validity of directions made

[39] The judgment appealed examined the process of delegation, as if the directions were the direct product of a statutory power. But, correctly analysed, they were not. The first direction was one within the legitimate power of any judge of the District Court to make. There is only one District Court in New Zealand;[41] in principle, a judge of that Court might issue directions to any or all registrars of that Court. Given the extent of the first direction, however, it would ordinarily be expected to be made only by the Chief Judge or a judge delegated responsibility by the Chief Judge to make directions to apply to the whole jurisdiction. If there is disagreement among judges about the making of such a direction, that is a matter for the Chief Judge to resolve.

[40] Here, in substance the allocation by judicial direction of responsibilities as between registrars and judges differs only immaterially from more common directions allocating responsibilities as between judges — for example based on list, location, training or experience. Allocation of responsibility among judicial officers having jurisdiction is not inconsistent with the statutory framework. The conferral of jurisdiction by statute here was always likely to be subject to allocative direction under inherent power. There is nothing irrational or repugnant about the first direction requiring family violence-related bail be determined by a judge. In this respect we note Mr McDonald's claim for review was based upon both illegality and unreasonableness. As to the latter claim, the Judge found the directions manifestly reasonable, and Mr Bailey did not seek to argue otherwise before us.[42]

[41] The Chief Judge gave Judge Walker responsibility to lead the District Court response to family violence. Judge Walker could make the first direction either under his own inherent power or pursuant to delegation by the Chief Judge. In the latter

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41 District Court Act, 7(4).
42 High Court judgment, above n 1, at [48].

respect, s 24(3)(g) might have been invoked, but it need not have been. In these circumstances it is neither necessary nor appropriate that we examine the internal arrangements made by the Chief Judge and Judge Walker, because they are essentially beside the point.

[42] The same is true also of the second direction, made by Judge O'Driscoll in his capacity as the Executive Judge at Christchurch, and applying to that district only. Plainly that direction lay within the purview of an executive or list judge to make.

Costs appeal

[43] Mr McDonald appeals the refusal of Dunningham J to grant him costs. That decision was made in a second judgment delivered only a few days before the present hearing.[43] Although allocated an appeal number, CA321/2021, for convenience it was treated before us as a cross-appeal. Given the result in the principal appeal, Mr McDonald's costs appeal in CA321/2021 is dismissed.

Result

[44] The appeal by the District Court in CA192/2021 is allowed.

[45] The declaration made at [50] of the High Court judgment is set aside.

[46] The appeal as to costs by Mr McDonald in CA321/2021 is dismissed.

[47] Mr McDonald being legally aided, there are no orders for costs in either appeal or Court.

Solicitors:
Crown Law Office, Wellington for The District Court at Christchurch
Hansen Law, Christchurch for Mr McDonald

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[43] Costs judgment, above n 3.