

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 63/2022  
[2022] NZSC 110

BETWEEN                      LEE VANDERVIS  
   Applicant

AND                              DUNEDIN CITY COUNCIL  
   First Respondent

   DAVID BENHAM  
   Second Respondent

Court:                      O'Regan, Ellen France and Williams JJ

Counsel:                      L A Andersen KC for Applicant  
   M R Garbett and S M Chadwick for Respondents

Judgment:                      16 September 2022

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**JUDGMENT OF THE COURT**

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- A      The application for leave to appeal is dismissed.**
- B      The applicant must pay the respondents (collectively) costs of \$2,500.**
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**REASONS**

**A \$12 parking ticket**

[1]      The factual background to this application for leave to appeal began with the applicant, Mr Vandervis, being issued a \$12 parking ticket. Mr Vandervis is a Dunedin City councillor. He was upset because he had paid for an hour's parking and had not noticed that there was a 30 minute maximum parking period because the P30 sign was not visible when using the meter. He complained to a Council employee at the Council Customer Services desk, an exchange that was witnessed by others. He then emailed

the Chief Executive of the Council to complain about the employee involved in that incident. The employee then made a complaint against Mr Vandervis.

### **Investigation**

[2] The Chief Executive engaged the second respondent, Mr Benham, to undertake an investigation of the complaint against Mr Vandervis. Mr Benham concluded that Mr Vandervis had breached the Council's Code of Conduct on three grounds: a breach of the requirement to treat employees with courtesy and respect, a failure to avoid doing anything that might compromise or be seen as compromising the impartiality of an employee and a breach of the requirement not to influence or attempt to influence any Council employee in order to benefit their own or family's personal or business interests. The essence of the third breach was a finding that Mr Vandervis had tried to get the Council employee to cancel the \$12 parking ticket.

### **Censure**

[3] Mr Benham presented his report to the Chief Executive. Following this, a Code of Conduct report from the Council Executive Leadership Team was presented to the Council. Upon receipt of the Code of Conduct report, and having heard from Mr Vandervis, the Council decided to accept the findings of the investigation and to censure Mr Vandervis.

### **Judicial review**

[4] Mr Vandervis then commenced judicial review proceedings against the Council. He was unsuccessful in both the High Court<sup>1</sup> and in the Court of Appeal.<sup>2</sup>

### **Leave application**

[5] Mr Vandervis challenged all of the findings made by Mr Benham in the High Court and Court of Appeal, including technical challenges about the procedure that had been adopted. However, his application for leave to appeal to this Court seeks to

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<sup>1</sup> *Vandervis v Dunedin City Council* [2020] NZHC 3436 (Gendall J) [HC judgment].

<sup>2</sup> *Vandervis v Dunedin City Council* [2022] NZCA 219 (Collins, Lang and Mallon JJ) [CA judgment].

challenge only the finding that he attempted to influence a Council employee in order to benefit his own, or his family's, personal or business interest (the third finding mentioned above at [2]).

[6] In his submissions in support of the application, the applicant identifies the point of law at issue as follows:

... [w]hether the Court of Appeal was correct in making findings that were contrary to the evidence including evidence of the Appellant that was accepted by the Respondents as he was not required for cross-examination.

[7] The applicant wishes to challenge four aspects of the decisions of the Courts below. We address each of these briefly.

### **Notice of the complaint**

[8] The first is that the applicant knew the details of the complaint that he was trying to have the parking ticket waived by the Council employee. The High Court found that Mr Vandervis was well aware of the nature of the complaint against him.<sup>3</sup> The Court of Appeal agreed.<sup>4</sup> The applicant wishes to challenge these concurrent findings of fact. They are clearly matters that are particular to the present case and raise no point of public importance. Nor do we consider there is any appearance of a miscarriage in the way the lower Courts dealt with this point.

### **What the Council employee said**

[9] The second finding the applicant wishes to challenge on appeal is an observation made by the Court of Appeal that the Council employee had not specifically said that the applicant was attempting to get off a parking ticket.<sup>5</sup> That observation appears to be contrary to what the employee told Mr Benham but it was favourable to the applicant and we see no basis on which to grant leave in respect of it.

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<sup>3</sup> HC judgment, above n 1, at [60].

<sup>4</sup> CA judgment, above n 2, at [52].

<sup>5</sup> At [57].

### **Gist of the complaint**

[10] The third finding the applicant wishes to challenge is the finding by the Court of Appeal that Mr Vandervis knew the gist of the complaint against him and that this was sufficient to provide him with an opportunity to respond.<sup>6</sup> The applicant wishes to argue that the Court of Appeal was wrong to find that the applicant knew the gist of the complaint given that the Court had accepted that the request to cancel the parking ticket may not have been made. But, as just noted, the evidence was clear that the Council employee told Mr Benham that the request to cancel the ticket was, in fact, made, and the finding of both Mr Benham and the High Court was to that effect. Again we see no utility in granting leave on this point. It is quintessentially factual and raises no point of public importance; nor do we consider there is any appearance of a miscarriage of justice.

### **Opportunity to contest**

[11] The fourth finding the applicant wishes to challenge is the Court of Appeal's finding that he had an opportunity to contest the report when the matter came before the Council.<sup>7</sup> Again, this is a proposed challenge to concurrent findings of fact in the Courts below. We do not see any prospect of success in relation to this argument and no appearance of a miscarriage of justice.

[12] The application for leave to appeal is dismissed.

[13] The applicant must pay the respondents (collectively) costs of \$2,500.

Solicitors:  
Anja Klinkert Lawyers, Dunedin for Applicant  
Anderson Lloyd, Dunedin for Respondents

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<sup>6</sup> At [59].

<sup>7</sup> At [60].