

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 62/2024  
[2024] NZSC 108

BETWEEN FRANCISC CATALIN DELIU  
Applicant

AND ATTORNEY-GENERAL  
Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: Applicant in person  
D L Harris for Respondent

Judgment: 6 September 2024

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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 respondent costs of \$2,500.**
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**REASONS**

**Introduction**

[1] The applicant has filed an application for leave to appeal from a decision of the Court of Appeal declining an application for review of the Deputy Registrar’s decision not to waive security for costs.<sup>1</sup> Security for costs was set in the amount of \$7,060 in relation to the applicant’s appeal from a decision of the High Court declining the applicant’s judicial review claim.<sup>2</sup>

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<sup>1</sup> *Deliu v Attorney-General* [2024] NZCA 236 (Cooke J) [CA judgment].

<sup>2</sup> *Deliu v Attorney-General* [2023] NZHC 3695 (Gault J) [HC judgment].

## Background

[2] The applicant’s claim for judicial review in the High Court challenged the actions of prosecutors at the Auckland Crown Solicitor’s office (the Crown Solicitor’s office) in relation to two charges of attempting to pervert the course of justice.<sup>3</sup> These two charges were laid by the police in the District Court at Auckland prior to the first call on 2 May 2018. Subsequently, on 13 July 2018, the Crown assumed responsibility for the prosecution of the charges.

[3] There were three causes of action pleaded in the judicial review proceedings: breach of statutory duty, ultra vires and breach of natural justice. The essence of the complaint underpinning these claims is that the involvement of the prosecutors in the Crown Solicitor’s office as counsel at both the stages we have mentioned — namely, when the prosecution was under the auspices of the police and subsequently when the Crown assumed responsibility — meant that the duty of independence applicable to Crown prosecutors was not met.

[4] Various orders were sought by way of relief including a direction that the judgment be referred to the Solicitor-General in relation to the conduct of the Crown Solicitor’s office and the relevant prosecutors, a declaration of a breach of s 27 of the New Zealand Bill of Rights Act 1990 (the Bill of Rights), and an order quashing amendments that had been made to the charges.

[5] In deciding that there was no merit in the claim, the High Court discussed s 193 of the Criminal Procedure Act 2011, which imposes a duty of independence on the Solicitor-General and Crown prosecutors in the conduct of Crown prosecutions. There was also discussion of cl 9.3 of the Solicitor-General’s Prosecution Guidelines which provides that when a Crown prosecutor assumes responsibility for a prosecution, an “independent review of the charges” should be undertaken.<sup>4</sup> The High Court found that these provisions did not mean that there was no duty of independence on prosecutors when appearing for or advising the police, which meant there was no merit

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<sup>3</sup> These charges and two other associated charges have now been stayed by the Deputy Solicitor-General: *R v Deliu* CRI-2017-004-1442, 18 July 2024 (Notice of Stay of Proceeding).

<sup>4</sup> See Te Tari Ture o te Karauna | Crown Law Office *Solicitor-General’s Prosecution Guidelines* (1 July 2013).

in the applicant's argument that, in the latter context, the prosecutors were "hired guns".<sup>5</sup> Further, the Court considered that the effect of cl 9.3 was to require a review independent from the prosecuting agency. Finally, the Court said there was no inherent conflict of interest in this situation given that the interests represented, regardless of whether the police or the Crown had responsibility for the prosecution, are those of the Crown.

[6] The applicant appealed to the Court of Appeal from the High Court decision, contending that there was no independent review as required and that the High Court had erred in not recognising the applicant's rights were affected.

[7] The applicant also applied to the Registrar of the Court of Appeal to dispense with security for costs. The Deputy Registrar declined to waive security for costs. While the Deputy Registrar found that the applicant was impecunious, she considered this was not an appeal that a reasonable and solvent litigant would pursue.

[8] On review, the Court of Appeal was satisfied that the applicant was impecunious. The Court agreed with the Deputy Registrar that the appeal was not one that a solvent applicant would reasonably prosecute when the costs and benefits of the litigation were taken into account. A number of factors were relied on to support this view including the difficulties in reviewing discretionary decisions made by prosecutors "as the Court exercises restraint given the other checks and balances associated with a prosecution"; and where "the proposed appeal involves an element of vexatiousness", noting also that there were two other appeals before the Court of Appeal in relation to the charges.<sup>6</sup>

### **The proposed appeal**

[9] The applicant says that the underlying appeal to the Court of Appeal has merit. He was not provided with an independent review and s 27 of the Bill of Rights was engaged. Amongst other matters, the applicant relies on acceptance by the Court of Appeal in the review decision that the question regarding the discretionary

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<sup>5</sup> See HC judgment, above n 2, at [23].

<sup>6</sup> CA judgment, above n 1, at [10]–[11].

powers of prosecutors was a novel one. His case is that no explanation was given as to why his argument was wrong, with the result that the Court erred in dismissing his application for waiver.

### **Our assessment**

[10] In dismissing the application for review, the Court applied the principles set out by this Court in *Reekie v Attorney-General*.<sup>7</sup> The applicant's challenge is to the application of those principles to the particular facts. The novelty of the underlying appeal does not alter that. Accordingly, no question of general or public importance arises.<sup>8</sup>

[11] Nor does anything raised by the applicant give rise to the appearance of a miscarriage of justice in the way in which the principles in *Reekie* have been applied.<sup>9</sup> As the Court of Appeal said, the matters raised by the claim for judicial review were not central to the applicant's interests. Further, as the Court also said, the applicant is challenging "the processes associated with the bringing of the charges in a repeated way".<sup>10</sup> In all of the circumstances, the conclusion that this is a case where it is not reasonable to expect the respondent to respond to the appeal without the normal requirement for security for costs is unsurprising.

### **Result**

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

[13] The applicant must pay the respondent costs of \$2,500.

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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<sup>7</sup> *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [19]–[21] and [35].

<sup>8</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>9</sup> Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5] as to the approach taken to a miscarriage of justice in the civil context.

<sup>10</sup> CA judgment, above n 1, at [11].