

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 53/2020
[2020] NZSC 108**

BETWEEN DONNA MARY NEWLANDS
Applicant
AND NELSON CITY COUNCIL
Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person
K E Mitchell for Respondent

Judgment: 8 October 2020

JUDGMENT OF THE COURT

- 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

[1] Ms Newlands has filed an application for leave to appeal against a decision of the Court of Appeal.¹ In that decision, Collins J declined Ms Newlands' application to review a decision of the Deputy Registrar not to dispense with security for costs on Ms Newlands's appeal to the Court of Appeal against a strike-out decision by the High Court.² The High Court had earlier held it had no jurisdiction to hear an appeal against the District Court's decision declining to make a pre-trial ruling under the Declaratory Judgments Act 1908 on whether strict liability is imposed by s 57(2) of the Dog Control Act 1996.³

¹ *Newlands v Nelson City Council* [2020] NZCA 262 (Collins J).

² *Newlands v Nelson City Council* [2020] NZHC 447 (Associate Judge Lester).

³ *Newlands v Nelson City Council* [2019] NZHC 1692 (Cull J) [HC leave judgment].

Background

[2] The application for leave has its origins in two charges brought by the respondent, the Nelson City Council (the Council), against Ms Newlands under ss 57(2) and 33EC of the Dog Control Act. The charges were laid on 31 January 2019. The defended District Court hearing has been delayed due to intervening proceedings and successful applications for a series of adjournments by Ms Newlands.

[3] Ms Newlands unsuccessfully applied in this Court for a stay of the District Court's decision.⁴ At the time of this Court's stay decision, the defended District Court hearing was to be held on 19 August 2020. It is now to be held on 2 December 2020.

Submissions

[4] Ms Newlands submits that Collins J did not address the merits of her appeal, including the purpose of the Declaratory Judgments Act, and that Collins J erred in refusing the review of the security for costs decision on a premise that the offence Ms Newlands is charged with is one of strict liability. Ms Newlands says the issue of whether the offence is strict liability engages the right to be presumed innocent under the New Zealand Bill of Rights Act 1990.⁵ Ms Newlands relies on *Reekie v Attorney-General*, which recognised that vindication of rights under the Bill of Rights Act may have personal and public non-financial benefits.⁶

[5] The Council submits that there can be no genuine public interest in the appeal because the issues for which declarations were originally sought have already been conclusively determined by the courts.⁷ The Deputy Registrar and Collins J applied the test for security for costs correctly and were correct to refuse to dispense with the requirement to pay security for costs in this case. In the Council's submission, Ms Newlands' current application is an abuse of process. A reasonable and solvent litigant would not proceed with this appeal because it is hopeless and the benefits to be obtained are outweighed by the costs of the appeal.⁸

⁴ *Newlands v Nelson City Council* [2020] NZSC 80 (Glazebrook, Ellen France and Williams JJ).

⁵ New Zealand Bill of Rights Act 1990, s 25(c).

⁶ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [41].

⁷ HC leave judgment, above n 3, at [37]–[38]; *Epiha v Tauranga City Council* [2017] NZCA 511, [2017] NZAR 1664; and *Walker v Nelson City Council* [2017] NZCA 526 at [10].

⁸ *Reekie*, above n 6, at [35].

Our assessment

[6] There is no challenge to the principles relating to dispensation with security for costs. The principles applicable to security for costs set out in *Reekie* were applied in this case. This is not a case where it is right to require the respondent to defend the judgment under challenge without the usual protection as to costs provided by security.⁹

[7] The leave criteria are not met. No question of general or public importance accordingly arises out of the approach to security for costs and there is no risk of a miscarriage of justice.¹⁰

Result

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

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

Solicitors:
Tasman Law Limited, Nelson for Respondent

⁹ *Reekie*, above n 6, at [31].

¹⁰ Senior Courts Act 2016, s 74(2)(a) and (b).