

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF  
COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE  
ACT 1985.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA684/2018  
[2019] NZCA 398**

BETWEEN                      NICHOLAS PAUL ALFRED REEKIE  
Appellant

AND                              CLAIMANTS A & B  
Respondents

Court:                          Clifford and Wild JJ

Counsel:                      Appellant in person  
No appearance for respondents  
V E Casey QC to assist the Court

Judgment:                    29 August 2019 at 4 pm  
(On the papers)

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**JUDGMENT OF THE COURT**

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- A Each of the appellant's two applications is declined.**
- B The appellant is directed to comply with r 43(1) of the Court of Appeal (Civil) Rules 2005 by Friday 13 September 2019.**
- C No order as to costs.**
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**REASONS OF THE COURT**

(Given by Wild J)

**Two applications**

[1] Two applications by the appellant Mr Reekie are for decision:

- (a) an application, filed on 6 May 2019, seeking an extension of the time fixed by r 43(1) of the Court of Appeal (Civil) Rules 2005 to apply for the allocation of a hearing date and file the case on appeal; and
- (b) an application, filed on 4 June, seeking, under r 5(1) and (4), a direction from the Court to the Chief Executive of the Department of Corrections (Corrections) to remove a ban placed on Mr Reekie corresponding with one of the respondents, Claimant A.

### **Background**

[2] Mr Reekie is a serving prisoner. He was imprisoned following conviction on charges of sexually violating four complainants, including the two respondents to this appeal. He has completed the finite sentence of imprisonment imposed on him in relation to Claimant A. He is presently serving the sentence of preventive detention imposed on him in relation to Claimant B.

[3] Under the Prisoners' and Victims' Claims Act 2005, the two respondents claimed compensation in respect of Mr Reekie's offending against them. In a decision given on 25 August 2017, the Victims' Special Claims Tribunal ordered Mr Reekie to pay \$50,000 in exemplary damages to the respondents.

[4] Unfortunately, the Tribunal failed to serve the respondents' notices of claim on Mr Reekie. He appealed to the High Court on the ground that the Tribunal had not accorded him natural justice. In a judgment delivered on 14 September 2018, Moore J allowed Mr Reekie's appeal and ordered the Tribunal to re-hear the respondents' claims.<sup>1</sup> The judgment notes a submission by Mr Reekie that the Court should strike out the claims but, failing that, should implement Mr Reekie's settlement offer of \$5,000 per claimant. The judgment records that Claimant B was prepared to accept that offer, but Claimant A was not.

[5] Mr Reekie filed his notice of appeal to this Court on 8 October 2018. Doubts as to whether this Court had jurisdiction to entertain the appeal and, if it did, whether

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<sup>1</sup> *Reekie v Claimants A and B* [2018] NZHC 2434 at [39].

the appeal had been brought in time were resolved in Mr Reekie's favour in a minute issued by Cooper J on 21 February 2019.<sup>2</sup> The Judge had the benefit of a memorandum from Ms Victoria Casey QC, as counsel assisting. That memorandum addressed the Court's jurisdiction. This Court's Registry has accordingly treated the appeal as filed on 21 February 2019.

[6] The two respondents have advised the Court that they do not intend taking any steps in relation to this appeal. Security for costs was accordingly dispensed with. Mr Reekie also has the benefit of a waiver of this Court's fees.

**Application for an extension of time to comply with r 43(1)**

[7] This application seeks an open-ended extension of time to apply for the allocation of a hearing date and file the case on appeal. The grounds are these:

- (a) Mr Reekie has settled the claim of the respondent Claimant B. The other respondent, Claimant A, wrote to Mr Reekie on 21 March 2019 asking him to make the arrangements necessary to enable her to "arrange a visit sometime in the near future".
- (b) Despite his best endeavours with the prison authorities, Mr Reekie has not been able to make those arrangements.
- (c) If Mr Reekie can meet with Claimant A, he has a good prospect of settling her claim also, thereby rendering a re-hearing by the Tribunal unnecessary, and likewise this appeal.

[8] Although this application may be well intentioned, it is not appropriate to grant it. Having appealed, now over 10 months ago (but 6 months ago if the 21 February date referred to in [5] above is adopted), Mr Reekie needs to get on with the appeal. That is what the Court's rules require. In particular, the 3 months' time period fixed by r 43(1) expired on 31 January (or on 21 May if the 21 February filing date is

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<sup>2</sup> *Reekie v Claimants A and B* CA684/2018, 21 February 2019.

adopted). If Mr Reekie manages to achieve an overall settlement of the respondents' claims he can abandon this appeal.

[9] We record that Mr Reekie's position as conveyed to this Court (that he has settled with Claimant B and Claimant A wishes to meet him) is difficult to reconcile with the stance advised to the Court's registry by Dr Gardner in an email on 30 July. Dr Gardner represented the two respondents before the Tribunal and was present when Mr Reekie's appeal was heard by the High Court. As conveyed by Dr Gardner, the respondents' position is that they want their claims reheard by the Tribunal. Whilst we have noted this conflict, we cannot resolve it and anyway do not need to.

[10] For those reasons, Mr Reekie's application for an extension of the time period fixed by r 43(1) is declined. We direct Mr Reekie to comply with r 43(1) by **Friday 13 September 2019**.

[11] Rules 39 and 40 deal with the content and form of the case on appeal. However, for Mr Reekie's assistance, we indicate that it seems to us the Case on Appeal need only comprise:

- (a) the notice of appeal;
- (b) the minute of Cooper J issued on 21 February 2019;
- (c) the judgment under appeal;
- (d) the minute and letters referred to in paragraph 4 of the notice on appeal;  
and
- (e) the Tribunal's decision (this is not strictly relevant, but it will complete the picture for this Court).

**Application that the Court direct Corrections to remove its ban on Mr Reekie communicating with Claimant A: r 5(1) and (4)**

[12] Mr Reekie filed this application on 4 June 2019. Its genesis is difficulties Mr Reekie says he is encountering with Corrections in making the arrangements necessary to enable Claimant A to visit him. The application states:

The appellant in the matter identified “Above” does hereby seek a direction of this court to remove an ultra vires ban placed on the appellant and claimant — A corresponding in 2016 by the appellant’s jailer, the Chief Executive of the Department of Corrections, in accordance with Court of Appeal (Civil) Rules 2005, Rule 5(1)(4).

[13] Such a direction is outside the scope of r 5(1) which provides:

The Court may give any directions that seem necessary for the just and expeditious resolution of any matter that arises in a proceedings, whether on application by a party or on the Court’s own initiative.

[14] The direction Mr Reekie seeks is not “necessary for the just and expeditious resolution” of this appeal.

[15] More generally, it would be entirely inappropriate for this Court, by way of a procedural direction in an appeal, to purport to give Corrections a direction as to how it should or should not restrict communications between a prisoner and a member of the public.

[16] This application is accordingly declined.

**Result**

[17] Both applications are declined.

[18] Mr Reekie is directed to comply with r 43(1) of the Court of Appeal (Civil) Rules by **Friday 13 September 2019**.

[19] We make no order as to costs.