

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

**CA156/2015  
[2015] NZCA 188**

BETWEEN MALCOLM EDWARD RABSON AND  
RICHARD JOHN CRESER  
Appellants

AND TRANSPARENCY INTERNATIONAL  
NEW ZEALAND INCORPORATED  
Respondent

Counsel: Mr Rabson in person  
D R Kalderimis for Respondent

Judgment: 21 May 2015 at 11:30 am  
(On the papers)

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**JUDGMENT OF RANDERSON J**

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- A The application for a review of the Deputy Registrar’s decision dated 30 April 2015 declining to dispense with security for costs is dismissed.**
- B Security for costs of \$5,880 must be paid by the appellants no later than 30 June 2015.**
- C The time for filing the case on appeal and to apply for the allocation of a hearing date is extended to 30 June 2015.**
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**REASONS**

## Introduction

[1] One of the two appellants, Mr Rabson, is seeking a review under r 7(2) of the Court of Appeal (Civil) Rules 2005 of a decision made by the Deputy Registrar of this Court declining an application to dispense with security for costs. The appeal relates to a judgment of Mallon J delivered on 3 March 2015.<sup>1</sup> By that judgment, the High Court struck out a claim brought by Mr Rabson and Mr Creser seeking judicial review of a decision made by the Ethics Committee of the respondent. The decision related to an inquiry made by Mr Siemer raising issues about government funding and control of the respondent and alleged conflicts of interest of its executive director. The decision of the Ethics Committee rejected Mr Siemer's complaint that any breach of ethics or conflict of interest had occurred.

[2] The statement of claim in the judicial review proceedings alleged that the initial inquiry made by Mr Siemer was made on behalf of Mr Rabson and Mr Creser who were said to be members of the respondent. Two causes of action were raised:

- (a) The Ethics Committee had breached natural justice in the process it adopted in dismissing the complaint; and
- (b) The Ethics Committee's approach involved predetermination and was procedurally improper.

[3] Granting the respondent's application to strike out the proceeding, Mallon J accepted the respondent's submission that there was no reasonably arguable cause of action because the respondent's handling of the complaint was not amenable to judicial review. She noted that the courts have been hesitant to permit challenges by way of judicial review of decisions of an incorporated society which typically concern private rather than public matters, and there were other avenues of redress available. The decision was not of a public nature. How the respondent chose to respond to Mr Siemer's inquiry was a private internal management matter, governed and resolved by the respondent's rules. On that footing, the Judge was satisfied the proceeding had no prospect of success.

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<sup>1</sup> *Rabson v Transparency International (New Zealand) Inc* [2015] NZHC 334.

### **The Deputy Registrar's decision**

[4] Both Mr Rabson and Mr Creser applied to have security for costs dispensed with. In her decision dated 30 April 2015, the Deputy Registrar declined to grant the application for these reasons:

- (a) Neither appellant had provided evidence of his financial situation.
- (b) The fact that they had been granted a fee waiver was not conclusive evidence of impecuniosity and, in any event, it did not warrant dispensation from the requirement to pay security for costs.
- (c) The merits of the case were not strong.
- (d) Neither appellant had paid a costs order for \$5,671.50 made against them in the judgment under appeal. She was not satisfied that the appellants would be in a position to pay costs if costs were ordered against them on the appeal.
- (e) The claim in the proceeding related to Mr Siemer's complaint. There were no benefits, financial or otherwise, to be obtained by the appellants by pursuing the appeal.
- (f) There were no exceptional circumstances or matters of public importance or significance that would warrant dispensing with security for costs.
- (g) Having regard to the Supreme Court's judgment in *Reekie v Attorney General* a reasonable and solvent litigant would not proceed with the appeal when the costs and benefits were weighed.<sup>2</sup>
- (h) It was not right to require the respondent to defend the appeal without the usual protection of security for costs.

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<sup>2</sup> *Reekie v Attorney General* [2014] NZSC 63, [2014] 1 NZLR 737.

## Grounds for review

[5] Mr Rabson's application for review raised two grounds:

- (a) He challenged the Deputy Registrar's statement in her decision that security for costs would only be dispensed with where she was of the view that it was right to require the respondent to defend the judgment without the usual protection as to costs provided by security.
- (b) It was wrong for the Deputy Registrar to rely on the findings of the High Court Judge to conclude that the appeal was not strong.

## Discussion

[6] I am satisfied that the decision of the Deputy Registrar under review was correct for the reasons she gave. The first of Mr Rabson's grounds of appeal was rejected in an earlier application brought by Mr Rabson.<sup>3</sup> As to the second ground, it is inherent that in the Court of Appeal (Civil) Rules and consistent with the Supreme Court's judgment in *Reekie* that the Registrar or Deputy Registrar is required to make an assessment of the merits of the relevant appeal.

[7] For the reasons given by Mallon J, I agree with the Deputy Registrar's assessment that the prospects of success of the appeal must be regarded as low. Leaving aside the debate as to whether Mr Siemer's inquiry was made on behalf of Mr Rabson and Mr Creser and further debate about whether the appellants remain members of the respondent, it is plain that the decision made by the Ethics Committee had no monetary or practical effect on the appellants. The decision was not of a public nature. Rather, it was essentially a private decision within an incorporated society, governed and resolved by the respondent's rules.

[8] In terms of the Supreme Court's judgment in *Reekie*, a reasonable and solvent litigant would not be justified in pursuing the appeal.

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<sup>3</sup> *Rabson v Registrar of the Supreme Court* [2015] NZCA 129 at [9].

## **Result**

[9] The application for a review of the Deputy Registrar's decision dated 30 April 2015 declining to dispense with security for costs is dismissed.

[10] Security for costs of \$5,880 must be paid by the appellants no later than 30 June 2015.

[11] The time for filing the case on appeal and to apply for the allocation of a hearing date is extended to 30 June 2015.

Solicitors:  
Chapman Tripp, Wellington for Respondent