

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

**CA618/2014  
[2014] NZCA 627**

BETWEEN MAREE HOWARD  
Appellant

AND ACCIDENT COMPENSATION  
CORPORATION  
Respondent

Counsel: Appellant in Person  
P A McBride for Respondent

Judgment: 18 December 2014 at 10:30 am  
(On the papers)

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**JUDGMENT OF RANDESON J**

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**A The application for review of the Registrar’s decision not to dispense with or defer payment of security for costs is declined.**

**B Payment of security of \$5,880 must be made within 20 working days of this judgment.**

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**REASONS**

**Introduction**

[1] Mrs Howard appeals against a judgment of Clifford J in which he struck out judicial review proceedings she had brought against the respondent (the ACC).<sup>1</sup> Security for costs on the appeal was set at \$5,880. On 19 November 2014 Mrs Howard applied to have security dispensed with or deferred until the determination of the appeal under r 35(6) of the Court of Appeal (Civil) Rules 2005

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<sup>1</sup> *Howard v Accident Compensation Corporation* [2014] NZHC 2431.

(the Rules). The Registrar dismissed that application on 26 November 2014. Mrs Howard has since applied for a review of that decision. I have considered the application for review under r 7(2) of the Rules and s 61A(3) of the Judicature Act 1908.

### **The proceedings in the High Court**

[2] In the judicial review proceedings in the High Court Mrs Howard challenged a notice issued by her employer, NZ Post Ltd, which required her to attend a medical assessment under s 72 of the Accident Compensation Act 2001 (the Act). The ACC applied to strike out the statement of claim on the basis that Mrs Howard had previously challenged the s 72 notice and its effects on her entitlements under the Act. It was submitted for the ACC that Mrs Howard's complaint in earlier proceedings had been finally dismissed and that the further proceedings by way of judicial review would amount to an abuse of process.

### **The High Court judgment**

[3] The High Court Judge recorded that Mrs Howard's case focussed primarily on the alleged failure by the ACC to properly investigate what was said to be NZ Post's lack of timely decision-making on two treatment entitlement claims lodged prior to the issue of the s 72 notice. By way of background, Mrs Howard suffered spinal injuries in 2006 and again in 2007. In consequence she was unable to work and was granted cover under the Act. A dispute arose in 2010 in relation to Mrs Howard's requests for approval of a pain management programme under ss 48 and 49 of the Act. It was in that context that ACC issued the s 72 notice. Mrs Howard's entitlements were later suspended under s 117(3) of the Act on the basis that she had unreasonably refused to undertake a medical assessment as required by the s 72 notice.

[4] The Judge detailed the series of review, appeal and recall decisions that followed these events including appeals by Mrs Howard to the District Court and

High Court.<sup>2</sup> In addition, she had applied for leave to appeal to this Court and to the Supreme Court. Those applications were both dismissed on jurisdictional grounds.<sup>3</sup>

[5] Clifford J was satisfied that the judicial review proceedings amounted to an abuse of the Court's process since the issues Mrs Howard sought to raise had in substance already been addressed. The application for judicial review was viewed by the Judge as an attempt to collaterally challenge earlier judgments. On that footing, the statement of claim was struck out.

### **The Registrar's decision on the application to dispense with security for costs**

[6] The application to dispense with security for costs was made on a variety of grounds but in essence, Mrs Howard submitted there was merit in the judicial review proceedings; they were not an attempt to re-litigate matters; they raised important issues of justice and fairness; and the relative financial positions of the parties ought to have been considered. In particular, the ACC was a body with very substantial investments while, in contrast, she was a superannuitant who had been granted a fee waiver. Paying security for costs in the sum fixed would be a significant impediment to her.

[7] The Registrar dismissed the application on the ground that Mrs Howard had not provided details of her financial position; the fact that she had been granted a fee waiver was not conclusive evidence of impecuniosity for the purposes of dispensing with security for costs; there was no evidence of exceptional circumstances or significant public interest such that the appeal should be heard; and given the conclusions reached by Clifford J as to abuse of process, the benefits of pursuing the appeal did not outweigh the costs of dispensing with security.

### **Grounds for review of the Registrar's decision**

[8] Mrs Howard applied for review on the grounds that the requirement to pay security for costs under r 35(3) of the Rules was ultra vires and was contrary to ch 29 of the Magna Carta 1297; the correct respondent was NZ Post Ltd; the application of

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<sup>2</sup> At [13].

<sup>3</sup> *Howard v Accident Compensation Corporation* [2013] NZCA 612 and *Howard v Accident Compensation Corporation* [2014] NZSC 31, (2014) 21 PRNZ 815.

s 54 of the Act had never been addressed; it would be “hard” to pay \$5,880 in security as it amounted to six months of superannuation payments; the practice of requiring security for costs is an impediment to justice in that it secures a benefit to the respondent as a result of unlawful behaviour; and the appeal raised issues of public interest and importance.

### **Analysis**

[9] In *Reekie v Attorney-General*, the Supreme Court held that the Registrar (or a single Judge on review) should only dispense with security if it is right to require the respondent to defend the judgment under appeal without protection as to costs.<sup>4</sup> Whether it is right is a matter of discretion which turns on whether the Court should preserve an impecunious person’s access to the Court for an appeal that a solvent person would reasonably wish to prosecute.<sup>5</sup>

[10] I am satisfied that there are no valid grounds to interfere with the Registrar’s decision declining to dispense with security for costs. The principal reason for this conclusion is that the appeal appears to have little merit. On the face of the judgment in the High Court, the issues Mrs Howard would seek to raise in the judicial review proceedings have already been fully determined under the processes available under the Act including full ventilation through the available appeal process. As Clifford J pointed out, s 54 was raised in Mrs Howard’s unsuccessful application to this Court for leave to appeal.<sup>6</sup>

[11] I am satisfied that a reasonable and solvent litigant would not pursue the appeal and that it would not be right to require the ACC to defend the judgment under appeal without the usual protection of security for costs. There are no exceptional circumstances and no public interest considerations that would justify dispensing with security for costs. The relative wealth of the parties is irrelevant. The claimed invalidity of the Rules is misconceived.

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<sup>4</sup> *Reekie v Attorney-General* [2014] NZSC 63 at [21] and [31].

<sup>5</sup> *Reekie*, above n 4, at [35].

<sup>6</sup> At [34] and [35].

[12] I also note that Mrs Howard does not plead impecuniosity. The mere fact that she is in receipt of superannuation and has been granted a fee waiver is not determinative.<sup>7</sup>

### **Result**

[13] In these circumstances, the application for review of the Registrar's decision not to dispense with or defer payment of security for costs is declined.

[14] The appellant must pay to the Registrar security of \$5,880 for the respondent's costs in this Court in relation to the present appeal within 20 working days of this judgment.

Solicitors:  
McBride Davenport James, Wellington for Respondent

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<sup>7</sup> *Reekie*, above n 4, at [42].