

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA414/2015
[2015] NZCA 365**

BETWEEN

DAVID OWEN CREQUER
Appellant

AND

THE CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Respondent

Counsel: Appellant in Person
N Bailey for Respondent

Judgment: 11 August 2015 at 3.30 pm
(On the papers)

JUDGMENT OF WILD J

Application to review Deputy Registrar's refusal to waive fee

The application to review the Deputy Registrar's decision refusing to waive the filing fee is dismissed.

REASONS

[1] By application filed on 7 August Mr Crequer applies under r 7(2) and s 61A(3) of the Judicature Act 1908 for review of the Deputy Registrar's decision refusing to waive the filing fee for this appeal. The Deputy Registrar's decision is recorded in a letter dated 30 July 2015 to Mr Crequer.

[2] Mr Crequer had sought waiver only on the basis that this appeal concerns a matter of genuine public interest.

[3] In her decision the Deputy Registrar stated:

I have considered your application and I am of the view, that on the material you have supplied, there is not a question of law that is of significant interest to the public or to a substantial section of the public, rather the judgment relates to a particular set of facts relating to you. Your application for waiver of the filing fee is declined.

[4] Mr Crequer filed this appeal on 28 July. It is against a judgment of Gendall J delivered on 9 July.¹

[5] Mr Crequer had appealed to the High Court from the 20 May 2014 decision of the Social Security Appeal Authority (SSAA) dealing with Mr Crequer's dispute with the Ministry of Social Development as to the commencement date of his benefit entitlement and the Ministry's decision to give him a domestic purposes benefit rather than a sickness benefit.

[6] In stating a case to the High Court the SSAA had posed two questions of law. Mr Crequer filed a memorandum objecting to the case stated on the basis that it "bears no relation to the case stated [he had] submitted to the Authority ...".

[7] In his judgment Gendall J set out the background and the applicable statutory provisions and rules. He then summarised the case stated regime, in particular the role of the Chair of the SSAA in the stating of the case. He said:²

- (d) ... I consider the role of the chairman to include:
 - (i) excising supfluous material (i.e. duplication and prolixity) from the case as submitted by the appealing party – particularly irrelevant factual material;
 - (ii) confining the case to errors of law alone;
 - (iii) narrowing the ambit of the case to the issues genuinely in contention between the parties (not every legal issue will be submitted to the High Court. Some will have obvious answers, or a long and settled history etc);
 - (iv) garnering input from the other party, or parties, as is considered appropriate (in the chairman's discretion).

¹ *Crequer v The Chief Executive of the Ministry of Social Development* [2015] NZHC 1602.

² At [40](d).

[8] Turning to this case he held:³

... To my mind, the case presented to this Court by the SSAA perfectly captures the issues in dispute. It appropriately narrows the compass of the proceeding before this Court in accordance with the rationale underlying the case stated procedure. A reading of the relevant material indicates that very nearly the entirety of the dispute, at least insofar as it is able to be entertained by this Court, is captured within the two questions posed. In sum, there is no basis whatsoever to impeach the contents of the case stated, or the procedure followed by the SSAA.

[9] He added:⁴

... I would tend towards the conclusion that the SSAA is able to narrow the scope of any appeal, or points raised, to ensure the questions of law are distilled to their fundamental essence, but not broaden them. This seems to be consistent with the right of appeal being conferred on the parties, and the scheme of the Social Security Act and cases stated generally. The role of the chairman is a controller of floodgates; ensuring that the parties raise only question of law, and, then, only relevant questions of law.

[10] In the result he dismissed Mr Crequer's application stating "the challenge to the contents of the case is without foundation".⁵

[11] From Mr Crequer's notice of appeal I discern two grounds of appeal:

- (a) Gendall J's conclusion in [45] that the challenge is without foundation is incorrect in law. The Judge was wrong to hold that the Chair's function in settling the case is a judicial act or function.
- (b) The questions adopted by the SSAA were actually formulated by Crown Law on behalf of the respondent. There is no place for the respondent to formulate the appeal of an appellant in regard to a decision in favour of the respondent.

[12] In short, Mr Crequer wants to appeal against the High Court's decision that the Chair of the SSAA is the arbiter of the case stated – the "controller of floodgates", as the Judge put it in his [43]. But, more fundamentally, Mr Crequer

³ At [41].

⁴ At [43].

⁵ At [45].

challenges the High Court's decision that the case stated "perfectly captures the issues in dispute".⁶

[13] Is there a public interest in the resolution of these two appeal questions? In my view no, because both relate only to the shape or scope of Mr Crequer's appeal to the High Court. Perhaps alive to this, in his waiver application Mr Crequer stated:

This matter of law is of significant interest to the public because appeals against NZSSAA decisions are being hi-jacked and marginalised by the NZSSAA and beneficiaries who have a right of appeal are being disenfranchised and marginalised and their appeals are being deliberately thwarted.

[14] Mr Crequer provides no basis for this assertion. Accordingly the Deputy Registrar could not have placed any weight on it and nor do I.

[15] Having reviewed the Deputy Registrar's decision I uphold it. Accordingly, if Mr Crequer wishes to pursue this appeal then he must pay the filing fee of \$1,100.

Solicitors:
Crown Law Office, Wellington for Respondent

⁶ At [41].