

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2021-485-316
[2021] NZHC 1347**

BETWEEN BENJAMIN MORLAND EASTON
Applicant

AND REGISTRAR OF THE HIGH COURT OF
NEW ZEALAND
Respondent

On the papers

Counsel: Applicant self-represented

Judgment: 9 June 2021

JUDGMENT OF CULL J

[1] This judgment concerns Mr Easton’s application to review the Registrar’s decision not to waive a judicial review application fee. That fee is payable on the filing of his judicial review proceedings against Ellis J’s decision to dismiss his appeal against his traffic infringement convictions.

Background

[2] In 2019, Mr Easton was convicted of two road transport infringement offences in the District Court, for parking on a traffic island, and being in charge of a vehicle that was not displaying a current certificate of fitness. This was appealed on two grounds:

- (a) The Court had no jurisdiction in the matter and the relevant legislation has no application, because of the Declaration of Independence of 1835 (the Declaration); and

(b) Because Wellington City Council has, by various acts or omissions breached the law, it cannot now seek to enforce the law against Mr Easton.

[3] Mr Easton also contested whether the area where his car was parked (that being a raised grassed area in the middle of a road) constituted a traffic island.

[4] Justice Ellis dismissed the appeal.¹ On the first ground of appeal, she considered the High Court was bound by *Ngaronoa v Attorney-General*, in which the Court of Appeal considered the Declaration should not be accorded discrete status as an extrinsic aid to the interpretation of contemporary statutes.² On the second ground, Ellis J concluded any non-compliance of Wellington City Council with the law was no defence to Mr Easton’s charges.³ The Judge also considered “traffic island” had been interpreted correctly and in accordance with the definition provided in the Land Transport (Road User) Rule 2004, and the traffic island conviction was therefore valid.⁴

[5] Subsequently, Mr Easton applied for judicial review on the grounds of judicial bias. It is this judicial review for which a waiver of the application fee was sought. The statutory test is that the review must be in the genuine public interest.⁵ The Registrar did not accept this was so and declined the fee waiver.

Public Interest

[6] Regulation 20 of the High Court Fees Regulations 2013 (the Regulations) establishes the criteria to be satisfied for a fee to be waived on the basis of genuine public interest:

20 Criteria for determining when proceeding concerns matter of genuine public interest

For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—

¹ *Easton v Wellington City Council* [2020] NZHC 3351.

² At [20]–[24], citing *Ngaronoa v Attorney-General* [2017] NZCA 351, [2017] 3 NZLR 643.

³ At [25].

⁴ At [17].

⁵ High Court Fees Regulations 2013, reg 20.

- (a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
- (b) a proceeding that—
 - (i) raises issues of significant interest to the public or to a substantial section of the public; and
 - (ii) has been or is intended to be commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.

[7] For Mr Easton’s judicial review application fee to be waived, the application must satisfy the criteria of reg 20(a). He must demonstrate that this proceeding will determine a question of law of significant interest to the public or to a substantial section of the public.

[8] Mr Easton argues the judicial review is in the public interest as it concerns operational bias and is brought for the purpose of educating the public. He states the proceeding will engage a “previously untested approach to the condition of sovereignty.” As I understand his application, this relates to the arguments advanced in the appeal around the status of the Declaration of Independence in New Zealand law.

[9] Mr Easton also refers to the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill currently before the Privileges Committee. He seeks a declaration that the Crown has no authority or jurisdiction to amend or abolish the Declaration of Independence and believes this Bill is the mechanism to do so. He considers such a declaration to be of interest to the public.

[10] However, this perception is misconceived. The purpose of the Bill, which, if passed, will formalise the ability of senior courts to make declarations where enactments are inconsistent with the NZ Bill of Rights 1991 (NZBORA). This is independent of the Declaration of Independence and does not give the Courts the ability to grant Mr Easton the remedy he seeks.

[11] I note that these public interest arguments largely relate to the substantive matters of the appeal rather than the grounds of judicial review. It appears Mr Easton is attempting to relitigate the matter. This goes beyond the scope of the judicial review, which must be confined to ensuring the Judge exercised her powers lawfully.⁶ The questions of law which Mr Easton states are in the public interest cannot be answered in this context. I acknowledge (as did Ellis J) that there are constitutional conversations yet to be had about the Declaration of Independence and its place in New Zealand law.⁷ However, a judicial review of an appeal upholding two minor traffic offences presents legal difficulties for Mr Easton to overcome and is not the forum for addressing the legal questions he raises.

[12] Mr Easton also refers to s 19 of NZBORA in his application, namely discrimination on the basis of ethnic or national origins, which includes nationality or citizenship. It is not clear how this right is engaged and if Mr Easton is contending that he has been subject to discrimination. It appears this is advanced in relation to his arguments concerning the Declaration of Independence. Accordingly, the previous analysis applies.

Corruption claims

[13] Mr Easton also submits that the Registrar's decision is part of a pattern of active corruption within which Registrars and Deputy Registrars have continually and deliberately attempted to thwart the passage of justice. As I understand his submissions, Mr Easton refers to the failure of the High Court to reply in a timely manner to further applications made and allegations that the earlier proceeding were not managed in accordance with required rules as examples of corruption.

[14] I do not accept that the Registrar's decision under review fits this characterisation. Mr Easton's application simply does not satisfy the criteria laid out in the Regulations such that his fee should be waived in the public interest.

⁶ Graham Taylor (ed) *Judicial Review: A New Zealand Perspective* (4th ed, LexisNexis, Wellington, 2018) at 3, citing *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 per Elias CJ at [1].

⁷ *Easton v Wellington City Council*, above n 1, at [24].

[15] Mr Easton's reference to the first clause of the Letters Patent also does not support his allegations. This mandates that the Governor-General must exercise powers and authorities conferred on him without prejudice to the office, powers, or authorities of any other person appointed.⁸ Mr Easton seems to interpret "without prejudice" as supporting his claim of corruption. Unfortunately, Mr Easton has misunderstood the meaning of this provision. This simply affords the Governor General powers, without affecting the authority of other appointed persons. It does not concern bias or corruption.

Result

[16] The questions of law which Mr Easton advances as in the public interest cannot be addressed within Mr Easton's judicial review application.

[17] I decline Mr Easton's application for review of the Registrar's decision.

Cull J

⁸ Letters Patent Constituting the Office of the Governor-General of New Zealand 1983, cl 1.