

BETWEEN CHILD POVERTY ACTION GROUP
INCORPORATED
Appellant

AND THE ATTORNEY-GENERAL
Respondent

Counsel: F M Joychild for Appellant
J Foster for Respondent

Date of
Minute: 15 November 2012

**DECISION OF WILD J: REVIEW OF DEPUTY REGISTRAR'S DECISION
DECLINING TO REFUND/WAIVE COURT FEES**

[1] By application filed on 29 October the appellant seeks a review of Deputy Registrar Leslie's decision of 3 October declining its application for a refund of the filing fee of \$1,087.50, and a waiver of the setting down fee of \$2,658.40.

[2] The operative parts of the Deputy Registrar's decision are as follows:

After considering the application, 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 nor a matter which will affect a substantial portion of the general public, rather the judgment considers a particular set of facts relating only to your situation.

I have also considered your application under impecuniosity grounds and have decided that your situation does not meet the criteria to have the fee waived as a matter of poverty. Although financially stretched, the Appellant has valuable assets and fund raising resources to which they would be able to secure the ability to pay the court filing fee.

Therefore, I have declined both your application for refund of the filing fee and waiver of the setting down fee.

[3] I consider the Deputy Registrar's decision is wrong both on the public interest and on the impecuniosity (that is, ability to pay) grounds. As to public interest, I consider that the considerable public interest in this appeal is demonstrated by at least the following:

- (a) The content of the judgment under appeal (that is, the judgment delivered on 25 October 2011 by Dobson J, Ms J Grant and Ms S Ineson).
- (b) The fact that this Court, in its judgment of 20 July 2012, granted special leave to the appellant to appeal on questions of law, the first of which incorporated questions raised by the Attorney on his application for leave to cross-appeal.¹
- (c) The fact that the Attorney has agreed not to seek security for the costs of this appeal.
- (d) The fact that the Human Rights Commission has given notice that it wishes to be heard on the appeal, supporting that notice with the 24 September 2012 memorandum of its counsel. In paragraph 10 of that memorandum counsel sets out matters which will be addressed in the appeal and cross-appeal which it considers are of general and public importance.

[4] This country's civil court system is heavily subsidised by the taxpayer. In other words, court fees only cover a portion of the costs of running civil courts. That is the reason why a matter must be "of genuine public interest"² before court fees are waived, with the consequence that the cost of running the court which hears the appeal falls wholly on the taxpayer (and thus on the public). I am satisfied that this appeal is of genuine and real public interest.

[5] Turning to the appellant's financial position, this was described at some length in the affidavit of the appellant's officer, Ms Helen Bull. I accept her evidence that the appellant survives on a very modest budget, relies on a committed pool of volunteers, and is projected to turn a loss in the current financial year, owing largely to the costs of funding this appeal, particularly the fees of senior counsel. Further, I accept Ms Bull's view that it is unlikely the

¹ *Child Poverty Action Group Inc v Attorney-General* [2012] NZCA 319.

² The wording in r 5(2)(b)(i) Court of Appeal Fees Regulations 2001.

appellant will be able to raise the necessary funds to proceed with the appeal if it has to pay Court fees as well as fund its legal representation.

[6] Having reviewed the Deputy Registrar's decision, I quash it and direct that the filing fee paid by the appellant be refunded to it, and the setting down fee for this appeal be waived.

Solicitors:
Davenport City Law, Auckland for Appellant
Crown Law Office, Wellington for Respondent