IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 381/97

BETWEEN GRAHAM ELLIOTT

Appellant

A N D WELLINGTON CITY COUNCIL

Respondent

Hearing: 11 February 1998

Counsel: No appearance for appellant
J.A.D. Woolley for respondent

Judgment: 11 February 1998

JUDGMENT OF DOOGUE J

This is an appeal against the imposition of fines and court costs totalling $350 against the appellant for his permitting his motor vehicle to be on a grass road verge off Ohiro Road when it was not carrying either a current warrant of fitness or an appropriate licence.

The appellant had responded on 21 July 1997 to two infringement notices in respect of the two offences alleged which were dated 18 July 1997. His letter was a full and careful one. It made plain that he had had his vehicle towed to and from the particular site because he was unable to leave it at the premises where he had been living until just before 15 June 1997. He had been unable to obtain new accommodation for himself until 16 July 1997. That accommodation had no parking facilities available and it was not until 20 July 1997 that he had been able to secure a garage for the vehicle. His letter made it plain that the vehicle had not been used on the road. It was at the site so that he could keep

an eye on it because it had been broken into where it had previously been. The letter also made plain that he had no intention of using the vehicle until substantially later in the year and that it would not be until then that he would have available funds for that purpose and that he was not in a position to pay the infringement fees. He therefore sought relief by the cancellation of the infringement notices or by some other suitable alternative.

It appears that when the matter came before Justices of the Peace he was treated as defending the matter and required to give evidence, but that the Justices did not accede to his request that he be heard in respect of sentence. The Justices understandably found that the offences were made out, as the appellant had admitted that they were technically committed. They did not take into account the particular circumstances which had led to the appellant's technical offences. Nor did they take into account his means as to fines. They took the view that there had been some misunderstanding and that therefore the penalties that should be imposed upon the appellant should be limited to those which would have been payable as a result of the infringement notices.

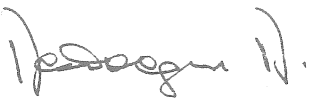
The appellant has been unable to appear today in support of his appeal but has written a responsible letter to the Court as to his position.

The position of the respondent is that, whilst no issue is taken with the appellant's explanation as to how the offences occurred, nevertheless the penalties should be upheld, notwithstanding that the offence was technical, and some reliance was placed upon a decision of this Court in Stevenson v Auckland City Council (unreported, AP53/96, Auckland Registry, 22 April 1996, Barker J). That, however, was a very different case, which turned upon the issue of whether the particular appellant was operating a vehicle when it was left on a road.

The present case went solely as to penalty and whether the circumstances of the appellant both in relation to the cause of the offences and his ability to meet any penalty were sufficiently taken into account by the

infringement notice penalties. It is apparent that that matter was not considered by the Justices. To refer the matter back to the District Court for a further hearing would be totally disproportionate to what is involved in this trivial matter.

I consider that the appropriate course is to uphold the appeal and to set aside the fines and court costs imposed upon the appellant and to substitute for the decision of the Justices in respect of both matters a discharge under the provisions of s. 19 of the Criminal Justice Act 1985. The circumstances of the case are such that it would have been entirely open to the Justices to have taken such a course, particularly given the careful explanation which had been provided by the appellant to the respondent prior to the matter being set down for hearing and which was before the Justices.



Solicitors for respondent:
Phillips Fox, Wellington