

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

CIV 2008-485-002551

UNDER the Judicature Amendment Act 1972

BETWEEN DALE FRANKLIN JENNER
Applicant

AND THE ATTORNEY-GENERAL
First Respondent

AND THE DISTRICT COURT AT HAMILTON
Second Respondent

Hearing: 5 May 2009

Appearances: J Anderson and NJB Taylor for the Applicant
SE McKenzie for the First Respondent

Judgment: 3 June 2009 at 11:30am

(RESERVED) JUDGMENT OF ANDREWS J

*This judgment is delivered by me on 3 June 2009 at 11:30am~~pm~~
pursuant to r 11.5 of the High Court Rules.*

.....
Registrar / Deputy Registrar

Solicitors:

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Introduction

[1] On 7 December 2007 the appellant, Mr Jenner, pleaded guilty in the District Court at Hamilton to 16 charges brought under the Arms Act 1983 (the Arms Act). He subsequently applied for leave to vacate the guilty plea. Leave was refused in the judgment delivered by District Court Judge M Harland on 24 October 2008 (the judgment).

[2] Mr Jenner has applied for judicial review of the judgment. The core issue is whether the Judge was correct in her interpretation of the relevant provisions of the Arms Act as requiring, in order for a person to be in lawful possession of a pistol, restricted weapon, or military style semi-automatic weapon (MSSA), that the person's firearms licence have an appropriate endorsement specific to the particular weapon. Put another way, the core issue is whether firearms licence endorsements are "generic" (for categories of weapons) or "specific" (for individual weapons).

[3] Mr Jenner's application is opposed by the first respondent, the Attorney-General. The second respondent, the District Court at Hamilton, abides the decision of the Court.

Background

[4] The Judge noted at [4] of the judgment that "this matter has had a complicated and prolonged history".

[5] For present purposes it is sufficient to record that Mr Jenner is a collector of weapons of various kinds. On 20 December 2006 the Police executed a search warrant at his address and seized weapons and explosive devices.

[6] Mr Jenner was then charged with six offences under the Arms Act. Two of the charges are not relevant to this proceeding. With respect to the remaining four charges:

- a) One was of unlawful possession of a pistol contrary to s 50(1)(a) of the Arms Act and one was of unlawful possession of an MSSA contrary to s 50(1)(c); and
- b) Two were laid as representative charges, one alleging unlawful possession of MSSAs contrary to s 50(1)(c), with 30 individual weapons itemised in a schedule the other alleging unlawful possession of explosives contrary to s 50(1)(b), with three explosive devices being itemised.

[7] Mr Jenner entered guilty pleas to the two charges referred to in [6] a) above, and to the “explosives” representative charge referred to in [6] b). He intimated a guilty plea to the “MSSA” representative charge. A disputed facts hearing was held before Judge Harland to determine the extent of Mr Jenner’s offending.

[8] In a judgment delivered on 29 October 2007 following the disputed facts hearing, the Judge held that the use of representative charges was not appropriate, because specific dates and details were available in respect of each MSSA and each explosive device. The representative charges were then withdrawn.

[9] Fourteen new Informations were laid on 19 November 2007: one charge of unlawful possession of a restricted weapon contrary to s 50(1)(b) of the Arms Act, two charges of unlawful possession of explosives contrary to s 50(1)(b), and 11 charges of unlawful possession of an MSSA contrary to s 50(1)(c).

[10] Mr Jenner entered guilty pleas to each of the new charges on 7 December 2007. He was remanded for sentencing on 8 February 2008.

[11] On 5 February 2008 Mr Jenner applied for leave to vacate the guilty pleas to the 14 new Informations, and the guilty pleas entered earlier on the two charges referred to at [6] (a) above. That application was heard on 24 June 2008. Leave was declined in the judgment delivered on 24 October 2008.

Application for leave to vacate a guilty plea

[12] It was common ground in the District Court and in this Court that in exercising the jurisdiction to give leave to vacate a guilty plea, the test is whether the interests of justice require leave to be granted. In that context, it has been recognised that the presence of a clear defence to the charge will justify a grant of leave.¹ The onus to make out the relevant grounds rests on the applicant for leave.²

Mr Jenner's application for leave

[13] It was submitted in the District Court that Mr Jenner had a clear defence to all the charges laid under s 50(1) of the Arms Act. This was in reliance on the judgment of District Court Judge A Singh in *R v B*.³ That judgment had not been delivered when Mr Jenner's guilty pleas were entered. On the basis of *R v B* it was argued on behalf of Mr Jenner that the holding of an endorsement to a firearms licence for either restricted weapons or MSSAs means that the holder can lawfully be in possession of *any* restricted weapons or MSSAs, rather than *specific* restricted weapons or MSSAs.

[14] Having referred to *R v B*, counsels' arguments, and the relevant provisions of the Arms Act (including those relating to firearms licence endorsements, unlawful possession of weapons, and permits to procure weapons), the Judge concluded at [40] that endorsements to a firearms licence do not cover restricted weapons or MSSAs generally, but must be obtained in respect of each individual weapon of either category that a licence holder wishes to possess. The Judge said:

... I am of the view that neither a C [restricted weapon] nor E [MSSA] endorsement covers possession of [restricted weapons] or MSSA's generally. I find that the endorsement must refer to the specific [restricted weapon] or MSSA in order for that weapon to be covered by it. ...

[15] In so concluding, the Judge reached a conclusion contrary to that reached by Judge Singh.

¹ See *R v Kihī* CA 395/03, 19 April 2004, at [17].

² See *R v Kihī* at [18].

³ *R v B* DC WN CRI 2007-085-2212, 24 December 2007.

Arms Act provisions

[16] The issue for determination turns on the interpretation of the relevant provisions of the Arms Act. It is appropriate, first, to note the long title to the Arms Act:

An Act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons.

[17] Section 20(1) provides a general prohibition against possession of a firearm, except by a person over 16 who is the holder of a firearms licence. Section 20(2) provides that the holding of a firearms licence does not itself entitle a person to possess a pistol, restricted weapon, or MSSA.

[18] Section 23 deals with applications for firearms licences, which must be made at an Arms Office, to a member of the Police. Section 24 provides that a firearms licence may be issued to a person if the member of the Police is satisfied that the applicant is over 16 and is a fit and proper person to be in possession of a firearm. Pursuant to s 25, firearms licences continue in force for ten years, unless earlier revoked or surrendered.

[19] A firearms licence issued under s 24 of the Arms Act is referred to as an “A” category licence. It does not permit a person to possess a pistol, restricted weapon, or MSSA. If a firearms licence holder wishes to possess such a weapon, an application must be made to obtain an appropriate endorsement to the firearms licence.

[20] Sections 29 and 30 deal with endorsements in respect of pistols and restricted weapons. These are referred to as “C” category endorsements. Sections 30A and 30B deal with endorsements in respect of MSSAs, referred to as “E” category endorsements.

[21] As relevant to this proceeding, ss 29 and 30 provide (in relation to pistols and restricted weapons) that a person who is a holder of a firearms licence may apply at an Arms Office to a member of the Police for an endorsement permitting the person

to have possession of a pistol or restricted weapon, in his capacity as a member of a recognised incorporated pistol shooting club, or as a bona fide collector of firearms.

[22] Pursuant to s 30, the endorsement may be made if the member of the Police is satisfied:

...

- (a) That the applicant is a fit and proper person to be in possession of the pistol or restricted weapon to which the application relates; and
- (b) That the applicant should, on grounds or in a capacity specified in section 29 of this Act, be permitted to have possession of the pistol or restricted weapon to which the application relates; and

...

[23] For MSSAs, s 30A provides that a firearms licence holder may apply for an endorsement permitting the applicant to have possession of an MSSA. Pursuant to s 30B, a member of the Police may make the endorsement applied for if the member of Police:

... is satisfied that the applicant is a fit and proper person to be in possession of the military style semi-automatic firearm to which that application relates.

[24] Pursuant to s 32, it is a condition of every “C” category endorsement that the holder observes security precautions prescribed by regulations made under the Act, and that every restricted weapon is rendered inoperable and maintained in that condition. Section 33A sets out the conditions of an “E” category endorsement for an MSSA, as follows:

- (1) It is a condition of every endorsement made under section 30B that the holder of the firearms licence observes, in respect of every military style semi-automatic firearm or part thereof in that holder’s possession, such security precautions as are required by regulations made under this Act.
- (2) Any member of the Police may, on the direction of the Commissioner, impose, as conditions of an endorsement made by that member of the Police under s 30B, such conditions with regard to the use or custody of a military style semi-automatic firearm (being conditions additional to that specified in ss (1) as that member of that the Police thinks fit.

[25] Section 34 is also relevant. Section 34(1) provides that holders of firearms licences (“A” category) must notify the Arms Office of any change of address, within 30 days of the change of address. With respect to licences with “C” and “E” category endorsements, s 34(2) provides:

...

- (2) Every holder of a firearms licence, being a licence that bears an endorsement permitting the holder to have possession of a pistol, military style semi-automatic firearm, or restricted weapon, who intends to change his address, shall notify an Arms Office of the arrangements made for the safe custody of the pistol, military style semi-automatic firearm, or restricted weapon during its shift to the new address.

...

[26] Section 35 deals with the issue of permits to procure pistols, restricted weapon, or MSSAs. Permits to procure such firearms may be issued only by a member of the Police acting under a direction of The Commissioner of Police, and the member of the Police must be satisfied that:

...

- (2) A permit to procure a pistol, military style semi-automatic firearm, or restricted weapon may be issued if the member of the Police to whom application is made is satisfied –
 - (a) That the person to whom it is issued is a licensed dealer; or
 - (b) That the person to whom it is issued is the holder of a firearms licence that bears an endorsement made under section 30 or section 30B and that, by virtue of that licence and its endorsement, that person is permitted to have possession of the pistol, military style semi-automatic firearm, or restricted weapon, as the case may be.

[27] Section 50 is headed “Unlawful possession of pistol or restricted weapon”, but refers also to possession of MSSAs. As relevant to this proceeding, it provides;

- (1) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding three years or to a fine not exceeding \$4,000 or to both who –
 - (a) Is in possession of a pistol and is not a person authorised or permitted, expressly or by implication, by or pursuant to this Act, to be in possession of that pistol; or

- (b) Is in possession of a restricted weapon and is not a person authorised or permitted, expressly or by implication, by or pursuant to this Act, to be in possession of that restricted weapon; or
- (c) Is in possession of a military style semi-automatic firearm and is not a person authorised or permitted, expressly or by implication, by or pursuant to this Act, to be in possession of that military style semi-automatic firearm.

...

- (3) In any prosecution for an offence against subsection (1) in which it is proved that the defendant was in possession of a pistol, military style semi-automatic firearm, or restricted weapon, the burden of proving that the defendant was authorised or permitted, expressly or by implication, by or pursuant to this Act to be in possession of that pistol, military style semi-automatic firearm, or restricted weapon shall lie on the defendant.

...

Counsels' submissions

Submissions on behalf of Mr Jenner

[28] Mr Anderson first repeated the submissions made in the District Court. He submitted that the scheme of the Arms Act supports the view that it is the endorsement that permits possession of restricted weapons and MSSAs, and that once Mr Jenner had obtained “C” and “E” category endorsements under ss 30 and 30B, he was then entitled to possess any number of firearms within either category.

[29] Mr Anderson also submitted that s 35, which requires a permit to procure pistols, restricted weapons, or MSSAs, is important as it allows the Police to be aware of the movement of firearms in the “C” and “E” categories. However, he submitted that s 35 is best viewed as an administrative process for that purpose, and is irrelevant to the lawfulness of possession.

[30] Mr Anderson submitted that if Parliament had intended that both an endorsement and a permit to procure would be required for lawful possession of restricted weapons and MSSAs, then there would have been express provisions to that effect in the Arms Act: that is, s 50 would have included an express reference to

the need for a permit to procure. He further submitted that, as a penal provision, s 50 should be strictly construed, *contra proferentum* the informant in the prosecution.

[31] With respect to the District Court decision, Mr Anderson submitted that the Judge appeared to have relied on:

- a) The purpose of the Act;
- b) That an endorsement to a firearms licence refers to a particular firearm rather than to a category of firearms; and
- c) That if the “permit to procure” system had not been followed, then that must by necessary implication render any possession “no authorised or permitted”.

Mr Anderson submitted that the Judge’s reasoning was incorrect.

[32] Mr Anderson summarised his submissions as to the proper interpretation of the provisions of the Arms Act as follows:

- a) Parliament’s intention was to licence the person, not the weapon:
 - i) A person must be deemed to be “fit and proper” before gaining an “A” category licence;
 - ii) A person must be even more “fit and proper” before being granted any endorsement;
 - iii) Endorsements were designed to apply to a category of weapon;
 - iv) In contrast to endorsements, the “permit to procure” system relates to individual weapons; and

- v) There is no offence for a purchaser in failing to having obtained a permit to procure, the only offence in the Act is for a seller.

- b) There is nothing in the long title to the Act, or that can be discerned in the purpose of the Act, that would require an endorsement of the ownership of each individual weapon. Further, there is nothing that can be inferred in the Act that would allow for both the “permit to procure” system and the endorsement system to be applicable to individual weapons;

- c) The “reading down” by the District Court Judge of s 50 to have a “narrow” meaning as opposed to an “expansive” one, is not supported by a close analysis of the text of the Act, nor can it be maintained when the Act is looked at as a whole; and

- d) The District Court failed to consider, or if it did, failed to give reasons as to, factual defences raised by Mr Jenner.

[33] Mr Anderson submitted that consideration of the text and purpose of the Arms Act required an interpretation that favoured Mr Jenner; that is, that endorsements to firearms licences are “generic”, not “specific” to individual weapons. The Judge’s “literal”, “narrow” interpretation, he submitted, took ss 29 and 30A out of context, was strained and in conflict with the requirements of the “permit to procure” system, and failed to address issues that arise when a person manufactures a weapon or modifies a weapon so as (for example) to change it from an MSSA to a restricted weapon. He submitted that Judge’s interpretation would be “simply unworkable, and cannot have been intended by Parliament”.

Submissions for the Attorney-General

[34] On behalf of the first respondent, Ms McKenzie submitted that the Judge correctly interpreted the relevant provisions of the Arms Act. She submitted that the scheme of the Act is best seen as a two-tier system: the first for general weapons,

and the second for weapons warranting particular control, that is, pistols, restricted weapons, and MSSAs. She accepted that for the first (general) tier, the focus is on the *owner* rather than the *weapon*, but submitted that a critical exception was created in respect of pistols, restricted weapons and MSSAs, such that the owner must be not only a fit and proper person to hold a firearms licence, but must also be a fit and proper person to hold a specific weapon.

[35] Ms McKenzie submitted that it is clear from the language of the relevant sections of the Arms Act that endorsements to a firearms licence are specific to particular weapons, not to categories of weapons. She submitted that the intention of the legislation was very clear: that specified weapons were to be individually identified, and the buying, selling, and possession of those weapons was to be strictly controlled.

[36] Further, Ms McKenzie submitted, consistent with that intention, the statutory framework of the Arms Act imposes a number of tight restrictions which, if complied with, ensure that the Police are able to keep track of each individual weapon within those categories that warrant particular control. She referred to s 18(2) (under which there are specific provisions as to the importation of pistols, restricted weapons, and MSSAs, and parts of such weapons), s 37 (which requires prior notification of arrangements for the safe custody of pistols, restricted weapons and MSSAs if they are to be moved to another address, s 38 (which requires notice to be given of the intended removal of any pistol, restricted weapon or MSSA out of New Zealand), and s 39 (which requires the immediate notification of a destruction of any pistol or restricted weapon).

[37] With respect to the factual defences raised by Mr Jenner, Ms McKenzie submitted that in the light of the Judge's finding that Mr Jenner did not have a clear defence (on the interpretation point) it was not necessary for the Judge to give consideration to the factual matters raised. The rejection of these defences is implicit in the rejection of Mr Jenner's argument as to the interpretation of s 50, because they could not be "clear defences" unless he succeeded in advancing his interpretation of s 50.

Existing case law

[38] The scope of s 50 of the Arms Act has been the subject of only limited consideration by the Courts. In addition to the two District Court judgments already referred to, both counsel referred to the judgment of Randerson J in *Brocas v Police*.⁴ *Brocas* was an appeal against conviction under s 45(1) of the Arms Act, and the issue was whether a failure to obtain a permit to procure a weapon meant that the weapon was not possessed for “some lawful, proper and sufficient purpose”. It was not a case of a conviction under s 50.

[39] Mr Anderson referred me to the following extracts from the judgment in *Brocas*:

- a) At page 2 His Honour, in outlining the relevant facts, said that the appellant:

... was the holder of a firearms licence issued under the Act with category B, C and E endorsements. Pursuant to the endorsements on the licence, the appellant was authorised under s 29(2)(b) of the Act to have possession of “restricted weapons” as defined by s 2 of the Act.

- b) At page 5 His Honour, as part of his discussion of the relevant provisions of the Arms Act said:

Section 37 contains a general prohibition on the possession of a restricted weapon but this section is expressly subject to any endorsement made under s 30 of the Act. Plainly, the possession of a restricted weapon is authorised by the issue of the appropriate endorsement under ss 29 and 30 of the Act.

- c) At page 6 His Honour contrasted s 45 and s 50 as follows:

Section 45 of the Act (under which the appellant is charged) may be contrasted with s 50. The former is concerned with the issue of the purpose for which the restricted weapon is in the defendant’s possession. A person holding a restricted weapon must not only have the relevant endorsement but must also hold that weapon for a lawful, proper and sufficient purpose. On the other hand, s 50 is not concerned with the purpose for which a weapon is held, but rather with its unlawful possession. In terms of s 50, a person commits an

⁴ *Brocas v Police* HC AK AP297/97, 2 February 1998.

offence who is in possession of a restricted weapon when not authorised or permitted (expressly or by implication) to be in possession of that weapon.

[40] As noted earlier, the issue in *Brocas* was whether a failure to obtain a permit to procure a weapon meant that the weapon was not possessed for “some lawful, proper and sufficient purpose”. Accordingly, the judgment in *Brocas* does not provide any assistance in determining the present issue, which is whether an endorsement must be obtained for each specific pistol, restricted weapon, or MSSA possessed, or whether an endorsement is generic, covering any number of weapons within the category.

Hansard references

[41] Counsel also made extensive reference to Parliamentary debates. When the Arms Bill was introduced on 8 September 1983 the then Minister of Police, the Honourable Ben Couch, said:

The Bill recognises that it is the person and not the firearm that is the danger. Therefore, the proposed changes introduce a system to license persons who use firearms. Before a licence will be issued, the police will determine that the person is “fit and proper” to hold a firearm – that is, that they are persons of good character who the Police expect will use firearms safely and reasonably.⁵

[42] In the second reading debate the Minister said:

Clauses 29, 30 and 31 deal with endorsements on licences for persons permitted to hold pistols or restricted weapons.⁶

[43] The Arms Act was amended in 1992 to require endorsements for MSSAs, in response to the killing of 13 people at Aramoana, near Dunedin. Sections 30A, 30B, and 33A were inserted into the Act. In the second reading of the Arms Amendment Bill the then Minister of Police, the Honourable John Banks, said:

The main thrust of the change in this Bill is: more strictly to control importing and possessing of military-style semi-automatic firearms; ...⁷

⁵ Parliamentary Debates (1983) Vol 452 at 2271.

⁶ See fn 40 at 3917.

⁷ Parliamentary Debates (1992) Vol 521 at 11087.

[44] In the third reading, speaking on behalf of the Minister of Police, the Honourable Roger Maxwell said:

The new legislation also means that everyone who owns or possesses a military-style semi-automatic firearm must have the new endorsed licence. The maximum penalty for someone who possesses such a weapon without having a proper licence and endorsement is 3 years' imprisonment or a \$4000 fine, or both.⁸

Discussion

[45] Both counsel referred to s 5(1) of the Interpretation Act 1999, which provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose.

[46] It was a principle of the common law that a person should not be penalised except under clear law – that a person was not to be found guilty of a crime unless the words of the Act covered the person beyond reasonable doubt. Any doubt was to be construed in favour of the individual.⁹ However, the emphasis on “purpose” has led to the presumption losing some of its force. In *R v Karpavicius*¹⁰ the Privy Council said, at [15], in relation to an argument as to the interpretation of the Misuse of Drugs Act 1975:

It may be right to conclude that on a purely textual view the words “in any other case” are capable of bearing either the interpretation put forward by counsel for the appellant or the interpretation adopted by the Court of Appeal, which before the Privy Council was supported by the prosecution. In a more literalist age it may have been said that the words of s 6(2A)(c) are capable of bearing either a wide or a narrow meaning and that the fact that a criminal statute is involved required the narrower interpretation to be adopted. Nowadays an approach concentrating on the purpose of the statutory interpretation is to be preferred ... This is reinforced by s 5(1) of the Interpretation Act 1999 ...

[47] The starting point in determining the proper interpretation is the long title to the Arms Act, in particular that it is an Act to promote “both the safe use and the control of firearms and other weapons”. Thus, “control” is as important an element of the Arms Act as is “safe use”.

⁸ Parliamentary Debates (1992) Vol 530 at 11768.

⁹ See *Bennion on Statutory Interpretation* (5 ed) 2008 at 825; Burrows and Carter *Statute Law in New Zealand* (4 ed) 2009 at 215.

¹⁰ *R v Karpavicius* [2004] 1 NZLR 156 (PC).

[48] It is then significant to note that each of ss 29, 30, 30A, and 30B refer to endorsements for pistols, restricted weapons, and MSSAs as applying to individual weapons.

[49] Section 29(2) provides that an endorsement may permit an applicant to have possession of *a* pistol or *a* restricted weapon. Section 30 provides that an endorsement may be made if the member of the Police is satisfied that the applicant is (a) a fit and proper person to be in possession of *the* pistol or restricted weapon *to which the application relates*, and (b) the applicant should be permitted to have possession of *the* pistol or restricted weapon *to which the application relates*.

[50] The words used are singular, and clearly indicate Parliament's intention that applications will be made, and endorsements made, in respect of individual, specific, weapons not categories of weapons.

[51] Turning to MSSAs, s 30A similarly provides that application may be made for an endorsement permitting the applicant to have possession of *an* MSSA. Section 30B provides that the endorsement may be made if the member of Police is satisfied that the applicant is a fit and proper person to be in possession of *the* MSSA *to which that application relates*. Again, the words used are singular, and clearly indicate Parliament's intention that applications will be made, and endorsements made, in respect of an individual, specific, weapon, not a category of weapons.

[52] Accordingly, I am satisfied that the Judge was correct in concluding, at [30] of the judgment, that ss 29, 30, 30A, and 30B of the Arms Act are to be interpreted as requiring that an application for an endorsement, and an endorsement on a firearms licence, relates to a specific weapon, as opposed to weapons of that category generally.

[53] Section 50 makes it an offence for a person to be in possession of a pistol, restricted weapon, or MSSA when the person is "not authorised or permitted, expressly or by implication" to be in possession of *that* pistol, *that* restricted weapon or *that* MSSA.

[54] The only manner in which a person may be “authorised or permitted, expressly or by implication” to be in possession of a weapon is under a relevant provision in the Arms Act. Where the weapon concerned is a pistol, restricted weapon, or MSSA, possession is “authorised or permitted” only if the person has a firearms licence which has the appropriate endorsement.

[55] I have set out earlier my conclusion that there must be a separate application and endorsement in respect of every individual pistol, restricted weapon, or MSSA a person wishes to possess. Accordingly, the only manner in which a person may lawfully be in possession of any pistol, restricted weapon, or MSSA is if the person has an endorsement specific to each individual weapon. That is, I do not accept the argument on behalf of Mr Jenner that endorsements are “generic”. Rather, I have concluded that the Judge was correct in concluding at [40] that an endorsement must refer to a specific restricted weapon or MSSA.

[56] Such an interpretation is not inconsistent with Parliament’s intention as expressed in the Parliamentary Debates. Rather, it is consistent with Parliament’s clearly expressed intention as to the control of firearms.

[57] It was common ground that Mr Jenner did not have a specific endorsement for each of the restricted weapons or MSSAs referred to in the Informations laid against him. It follows that, in the light of the conclusion just expressed, the Judge was correct in concluding that Mr Jenner does not have a clear defence to the charges. It is not, therefore, necessary to consider the matters raised as factual defences.

Result

[58] Judicial review of the Judge’s decision is refused.

[59] Counsel addressed me in relation to costs. Mr Anderson submitted that the point raised in the proceeding was one of public interest, where there is conflicting District Court authority. Although costs were initially sought by the Attorney-General, Ms McKenzie in oral submissions acknowledged that it is relevant to take

into account that this proceeding is before this Court where there is conflicting District Court authority. In the circumstances, I have concluded that it is not appropriate to make any order as to costs. Costs will lie where they fall.

Andrews J