

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

CIV-2007-485-1300

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| BETWEEN | RICHARD JOHN KNIGHT Plaintiff |
| AND | THE VETERINARY COUNCIL OF NEW ZEALAND First Defendant |
| AND | THE COMPLAINTS ASSESSMENT COMMITTEE OF THE VETERINARY COUNCIL OF NEW ZEALAND Second Defendant |
| AND | THE JUDICIAL COMMITTEE OF THE VETERINARY COUNCIL OF NEW ZEALAND Third Defendant |

Judgment: 31 July 2009

**JUDGMENT OF CLIFFORD J
ON DISBURSEMENTS CLAIMABLE BY LAY LITIGANT**

Introduction

[1] On 19 May 2009 I found in favour of Dr Knight in judicial review proceedings brought by Dr Knight challenging various aspects of the actions of each of the first and second defendants which resulted in him facing charges before the third defendant, as well as the decision of the third defendant in relation to those charges.

[2] In relation to costs, I stated in my judgment as follows:

[134] As a lay litigant, Dr Knight is not entitled to costs. Given my findings, however, I consider that Dr Knight is entitled to be paid his proper

and reasonable disbursements as defined in r 14.12 – i.e. expenses paid or incurred for the purposes of this proceeding that would ordinarily be charged for separately from legal professional services in a solicitor's bill of costs (including Court fees for this proceeding and expenses of serving documents for this proceeding or photocopying documents required by the High Court Rules or by a direction of the Court). These disbursements are limited to those which are specific to the conduct of this judicial review proceeding, reasonably necessary for the conduct of this proceeding and reasonable in amount.

[135] I invite counsel for the Complaints Committee and Council to confer further with Dr Knight to settle costs. If the parties are unable to settle this matter within 21 working days Dr Knight is then to file a schedule of disbursements he claims, together with brief submissions not exceeding two pages supporting his claim. Counsel for the Complaints Committee and Council are to file a response within a further seven working days, and again submissions are not to exceed two pages. I will then determine the issue of disbursements on the papers.

[3] The parties have been unable to come to an agreement as to the disbursements claimed by Dr Knight and they therefore seek a ruling on this issue.

[4] The first and second defendants have offered to meet disbursements to the value of \$4,079.00, subject to verification, covering:

- a) Airfares, parking (\$20.00), taxi fares (\$80.00) and meal expenses (\$50) for Dr Knight for each of the four hearings (\$2,389.00);
- b) Photocopying, binding and stationery (\$450.00);
- c) Telephone and internet (\$50.00);
- d) Court fees (\$1,190.00).

[5] Dr Knight also claims the lost wages of himself and his McKenzie friends. These are not disbursements within the meaning of r 14.12. Instead this claim seeks compensation for the time Dr Knight and his supporters have spent in pursuing this litigation – it is a claim for costs in everything but name. The lost wages are therefore not recoverable by Dr Knight.

[6] Dr Knight also seeks monies paid to the legal firm Blomkamp Cox. He says that he sought legal advice in response to an interlocutory application made by the

defendants. This appears to have been an interlocutory application for security for costs based on, amongst other things, a submission that Dr Knight's statement of claim was lengthy, non-specific and deficient. As evident from memoranda submitted to the Court at this time, Dr Knight instructed a lawyer to assist in the preparation of an amended statement of claim. Sums paid to a solicitor for help in preparing documents, and preparing to appear and argue the case in person, may be awarded as reasonable disbursements: *Malloch v Aberdeen Corp (No 2)* [1973] 1 WLR 71; [1973] 1 All ER 304 (HL); *McGechan on Procedure* at para HRPt14.10). There is a receipt from Blomkamp Cox for \$1,786.50 "on accounts cost judicial review". This is recoverable by Dr Knight as a reasonable disbursement. Dr Knight also refers to a further sum ("a little over \$200") for "other legal advice". In the event that Dr Knight can establish that this advice was related to these proceedings, it is also recoverable under this principle.

[7] Dr Knight also claims for the airfares of his McKenzie friends. His father, Mr Barry Knight served as his McKenzie friend during the first two hearings in these proceedings. His wife, Ms Michelle Knight, served as McKenzie friend for the last two hearings, with Mr Knight stepping back because of illness. Dr Knight claims for Mr Knight's airfares for the last two hearings on the basis that Mr Knight's knowledge of the case was such that "his assistance was vital even in a supportive role".

[8] Dr Knight was clearly entitled to have, as he did, his father and or wife serve as his McKenzie friend. In *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 the Court of Appeal held that the Court should take a "reasonably liberal approach" to the assessment and classification of disbursements claimed by lay litigants. In my view, such an approach results in the disbursements properly claimable by Dr Knight including the airfares of Dr Knight's McKenzie friends. I note that counsel's airfares are disbursements under r 14.12 such that, by reference to the assistance of a McKenzie friend being analogous to the support of counsel, there is no unfairness or imbalance in allowing the claim in this case. However, notwithstanding the support Dr Knight received from Mr Knight at the two hearings at which Mr Knight was not his McKenzie friend, there is no equivalent basis for claiming as disbursements the costs of Mr Knight's airfares for those hearings.

[9] Dr Knight further claims an additional charge incurred as the result of the last hearing being adjourned from February to March 2009. The need for the adjournment was not attributable to either party. In my view it is reasonable to let this expense lie where it falls.

[10] Subject to the above, I am satisfied that the disbursements claimed by Dr Knight are specific to the conduct of the proceeding, reasonably necessary and reasonable in amount. Moreover, Dr Knight has provided some receipts and/or credit card statements confirming the amount of the disbursements claimed. Insofar as he has been unable to provide receipts (and with the exception of the \$200.00 claimed as “other legal advice”), I am satisfied that the sums claimed are a reasonable estimate of the expenses he would have incurred, and do not consider, applying the reasonably liberal approach, that further verification is necessary.

[11] Disbursements are therefore awarded to Dr Knight:

- a) As set out at paragraph [3];
- b) In the amount of the airfares for Dr Knight’s McKenzie friends; and
- c) In the amount of the monies paid for legal advice in relation to preparation for these proceedings, being \$1,786.50 and so much of the further amount claimed as can be demonstrated by Dr Knight to relate to advice for these proceedings.

“Clifford J”

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