

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 2/2020
[2020] NZSC 2

BETWEEN THE KIWI PARTY INCORPORATED
Applicant
AND ATTORNEY-GENERAL
Respondent

Court: Winkelmann CJ, Glazebrook and O'Regan JJ
Counsel: G E Minchin for Applicant
G M Taylor for Respondent
Judgment: 11 February 2020

JUDGMENT OF THE COURT

- A The application for an extension of time to file an application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the respondent.**
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REASONS

[1] The applicant commenced proceedings in the High Court seeking declarations as to the validity of the Arms (Military Style Semi-automatic Firearms) Order 2019 (the Order), the process followed by Parliament in passing the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019 (the Act) and the validity of the Act.

[2] The High Court struck out the causes of action challenging the parliamentary process and the validity of the Act but did not strike out the cause of action challenging

the validity of the Order.¹ The Court also dismissed the applicant’s application for interim orders aimed at preventing the implementation of the Act.²

[3] On 4 June 2019, the applicant appealed to the Court of Appeal. The applicant sought a direction that the appeal be set down before a full court. This was declined and the matter has been set down for hearing before a divisional court on 3 March 2020. Disappointed at this turn of events, the applicant then made the present application seeking an extension of time to apply for leave for a “leapfrog” appeal directly to this Court. The present application was filed on 15 January 2020, almost eight months after the date of the High Court decision.

[4] This Court could grant leave to appeal only if satisfied that one or more of the grounds for appeal in s 74 of the Senior Courts Act 2016 applies and that there are exceptional circumstances warranting a leapfrog appeal as provided in s 75. The applicant seems to have accepted that there were no exceptional circumstances in this case, hence its appeal to the Court of Appeal. Its counsel, Mr Minchin, acknowledged that this Court would be assisted by the considered views of the Court of Appeal when addressing the matters the applicant wishes to raise in the event that this Court were to grant leave. But he argues that the allocation of the case to a divisional court implies that the Court of Appeal’s consideration of the issues would not be of assistance to this Court.

[5] We do not consider the Court of Appeal’s allocation of the case to a divisional court provides a proper basis for the grant of an extension of time to seek leave for a leapfrog appeal to this Court. The Court of Appeal is seized of the matter, the hearing in that Court is imminent and it should be permitted to continue the process of dealing with the appeal before it. In the event that either party seeks leave to appeal to this Court against the Court of Appeal’s decision, this Court can consider the merits or otherwise of granting leave with the benefit of the Court of Appeal’s views. In view of the fact that the Court of Appeal has yet to hear the case, and given the likelihood of a future application for leave to appeal to this Court from whichever party is

¹ *The Kiwi Party Incorporated v The Attorney General* [2019] NZHC 1163 (Wylie J).

² At [52].

unsuccessful in the Court of Appeal, we refrain from giving any indication of view on the merits of the applicant's case.

[6] The application for an extension of time to apply for leave to this Court is dismissed.

[7] The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Thomas & Co, Auckland for Applicant
Crown Law Office, Wellington for Respondent