

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 27/2020
[2020] NZSC 61

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: 6 July 2020

JUDGMENT OF THE COURT

- A The 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] Immediately after the attacks at two mosques in Christchurch on 15 March 2019, in which 51 people were killed and 40 people wounded, the Prime Minister announced changes to New Zealand's gun laws.

[2] On 21 March 2019, the Arms (Military Style Semi-automatic Firearms) Order 2019 (the Order) was promulgated pursuant to s 74A(c) of the Arms Act 1983. The Order remained in place for 21 days.

[3] Legislation was then introduced to the House. After a truncated period of consideration, the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act

2019 (the 2019 Act) was passed and came into effect from 12 April 2019. It revoked the Order and imposed new restrictions on firearms' dealers, created new offences relating to possession of certain types of firearms and authorised the implementation of a buy-back arrangement for firearms, magazines and gun parts that had become prohibited. It also established a temporary amnesty for those in possession of prohibited items.

[4] The applicant, the Kiwi Party, opposes these changes.

[5] The applicant commenced proceedings in the High Court seeking declarations relating to the Order, the process by which the 2019 Act was passed and the validity of the 2019 Act. The applicant also sought interim orders prohibiting the Government from acting on the 2019 Act and directing it to extend the amnesty put in place under the Act until six months after a general election or referendum on the 2019 Act.

[6] The Attorney-General filed an application to strike out the statement of claim.

[7] The application for strike-out and application for interim orders came before Wylie J. He struck out all of the claims, apart from the claim that the Order was ultra vires.¹ He also dismissed the application for interim orders.²

[8] The applicant appealed to the Court of Appeal against the order striking out 11 of its 12 claims. Its appeal was dismissed by that Court.³ It now seeks leave to appeal to this Court against the Court of Appeal decision.⁴

[9] The Court of Appeal distilled the arguments advanced to that Court in support of the applicant's appeal as follows:

[10] The submissions advanced in support of the appeal drew upon a variety of aspects of the constitutional and political history of England, the United States and New Zealand and comprised a potpourri of constitutional and jurisprudential concepts. At times the submissions advanced in support

¹ *The Kiwi Party Inc v The Attorney-General* [2019] NZHC 1163 at [24], [31], [37] and [47].

² At [52].

³ *The Kiwi Party Inc v Attorney-General* [2020] NZCA 80 (Collins, Simon France and Lang JJ) [CA judgment] at [66]–[67].

⁴ An earlier application for leave to bring a “leapfrog” appeal against the High Court judgment was dismissed earlier this year: *The Kiwi Party Inc v Attorney-General* [2020] NZSC 2.

of the appeal were mercurial and difficult to discern. We have, however, endeavoured to distil the submissions into the following propositions:

- (a) New Zealand citizens have a constitutional right to bear arms.
- (b) The processes and decisions of the Select Committee were unlawful.
- (c) The [2019] Act was unlawful.
- (d) The [2019] Act was introduced and passed through Parliament through the exercise of prerogative powers by the Crown and is therefore amenable to review by the High Court.
- (e) Section 3 of the Declaratory Judgments Act 1908 permits the Kiwi Party to seek a declaration that the [2019] Act is invalid and that it also breaches Magna Carta, the Bill of Rights 1688 and the Treaty of Waitangi.

[10] The Court of Appeal rejected the proposition that there was a constitutional right to bear arms in New Zealand.⁵ It considered that the attempts to question the procedures and decisions of the Select Committee were in breach of parliamentary privilege and therefore untenable.⁶ It found that nothing pleaded by the applicant engaged prerogative powers.⁷ It also found that the accepted doctrine that the courts cannot declare an Act of Parliament to be invalid applied and that nothing advanced by the applicant undermined that accepted doctrine.⁸ It therefore upheld the decision of the High Court to strike-out all but the first cause of action on the basis that they were untenable and could not possibly succeed.⁹

[11] The applicant seeks to challenge almost every aspect of the Court of Appeal decision in the event that leave is given. Its submissions do not, however, address the criteria for leave set out in s 74 of the Senior Courts Act 2016. We proceed on the basis that its argument is that the proposed appeal involves a matter of general or public importance. We accept that, if their proposed grounds of appeal were truly arguable, that test would be met. The arguments the applicant wishes to pursue on appeal have, however, insufficient prospects of success to justify a further appeal.

⁵ At [27].

⁶ At [45].

⁷ At [59].

⁸ At [63]–[65].

⁹ At [66].

[12] We therefore dismiss the application for leave to appeal.

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

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