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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2000-485-630

BETWEEN	**VONRICK CHRISFORD KERR**
	Plaintiff
AND	**ATTORNEY-GENERAL (sued on behalf of the NEW ZEALAND POLICE)**
	First Defendant
AND	**WELLINGTON NEWSPAPERS LIMITED**
	Second Defendant

Hearing: 23 September 2003

Counsel: Plaintiff in person
G C de Graaff for the First Defendant
A A Hopkinson for the Second Defendant

Judgment: 24 September 2003

JUDGMENT OF WILD J

This application

[1] By amended notice dated 3 June, the plaintiff applies for a review of the decision of Master Gendall delivered on 10 April.

[2] In that decision Master Gendall ordered the plaintiff to give each of the two defendants security for their costs of this proceeding in the sum of $12,500, a total of $25,000. The Master ordered the plaintiff to give that security by paying into Court 12 equal consecutive quarterly instalments of $2,083.33 commencing with a first payment three months from the date of judgment. The Master stayed the proceeding until the full $25,000 security was given. At the payment rate specified, the proceeding will thus remain stayed for three years.

Approach on this review

[3] Security for costs was fully argued before Master Gendall. His decision is a reasoned one, which the Master reserved. My approach is therefore essentially appellate. The plaintiff has the onus of satisfying me that the Master's decision was wrong: *Ophthalmological Society of New Zealand Inc. v Commerce Commission* [2003] 2 NZLR 145 (CA) at 155-157.

[4] Both the decision as to whether or not to order a party to give security and, if so, the amount of that security, involved the exercise of a judicial discretion. The Court of Appeal has recently seen a need to re-emphasise the highly discretionary nature of security for costs: *A F McLachlan & Ors v MEL Network Ltd* 20.8.02 CA39/02.

[5] A party seeking review of such a highly discretionary decision carries the onus of establishing that the Master acted upon a wrong principle, failed to take into account relevant considerations, took into account the irrelevant, or made a decision that was plainly wrong: *May v May* [1982] 1 NZLR 165 (CA), 170. It is not my task to second-guess the weight the Master gave relevant considerations.

Plaintiff's grounds for review

[6] Eight grounds for review are set out in the plaintiff's amended application for review dated 3 June. With the benefit of Mr Kerr's written and oral submissions, I am satisfied these grounds reduce themselves to six. I will deal with each in turn.

Ground 1: Master wrong in stating plaintiff had been sentenced for burglary

[7] Dealing adequately with this and the plaintiff's other grounds for review requires an understanding of the substance of this proceeding. It is a claim for $75,000 damages (that is the claim against the first defendant; in accordance with s 43(1) of the Defamation Act 1992 the statement of claim does not specify the

damages claimed against the second defendant) for allegedly defamatory remarks published in an article in "The Dominion" on 5 November 1998. That article stated:

> "**Police hunting for cliff drama man**
>
> A man freed from prison yesterday after serving a five month sentence for assaulting his wife went to her house and smashed his way in again last night, police said. Inspector Garry Allcock said Vonrick Kerr was arrested in March after a 45 minute cliff top standoff in Newlands when he threatened to drive his car, containing his three year old daughter, over the edge onto the Hutt motorway. He had breached a protection order taken out by his wife. Early today, police were hunting for Kerr. They said he should not be approached. Mr Allcock said Kerr obtained his wife's new address in Johnsonville and smashed a door with a rock about 9 pm. Kerr, a 35 year old dark-skinned man, then fled."

[8] The plaintiff alleges that this article was inaccurate and defamatory in two respects. The first is that, contrary to what the article states, the plaintiff had not been released the previous day (4 November 1998) "after serving a five month sentence for ***assaulting*** his wife ...". The emphasis is mine to catch the nub of this, first complaint. The correct position is that the plaintiff had, on 4 November 1998, been released from prison having served sentences of imprisonment of two, three and five months, each cumulative upon the other, imposed for breaches on three successive occasions of a protection order against the plaintiff obtained by his wife. Mrs Kerr had obtained that protection order, temporarily in the first instance, on 28 November 1997. The order was made final on 2 March 1998.

[9] Second, the plaintiff alleges the article defamed him in that he had not "... ***threatened*** to drive his car, containing his three year old daughter, over the edge ...". Again, the emphasis is mine to point up the gist of this second complaint.

[10] I will deal now with the "assault" allegation, reverting (in paragraphs [24]-[30] below), to address the "threat" allegation.

[11] Having set out the newspaper article, the Master said this:

> "[8] With one reservation, it seems that the article is accurate. On 4 November 1998 the plaintiff had been released from prison after serving a five month sentence, but this technically was not for

> "assaulting his wife". The sentence had been one of two years imprisonment for burglary, and breaching the protection order that his wife had obtained a year earlier."

[12] The plaintiff's point is that the Master got it wrong. The plaintiff had not been imprisoned for burglary and breaching the protection order, but merely for three successive breaches of the protection order. The plaintiff was subsequently convicted of burglary in respect of his conduct, referred to in the article, in smashing his way in to his wife's house on the evening of 4 November 1998 (he used a rock to shatter a ranch slider door). The plaintiff accepts he did this. He pleaded guilty to burglary in the course of a trial in the District Court at Wellington at the end of March 1999, following his discharge on the more serious charge of aggravated burglary. The trial Judge ruled that the rock with which the appellant was armed was not a weapon.

[13] I accept that paragraph [8] of the Master's decision contains a factual error: the plaintiff had not been in prison for burglary, but for three successive breaches of the protection order. He was subsequently, on 7 May 1999, sentenced to two years imprisonment for committing burglary by breaking into his wife's home on the evening of 4 November 1998 in the manner described in the newspaper article, thereby committing a fifth breach of the protection order.

[14] I am unable to view this error as one vitiating the Master's overall reasoning, and in particular the Master's assessment of the merits of the plaintiff's claim.

[15] To reiterate: the plaintiff's first substantive complaint in this case is that the newspaper article defamed him by stating that he had been in prison for five months for assault, when he had in fact been there serving cumulative sentences totalling 10 months for three successive breaches of the protection order. In fact, the judgment of the Court of Appeal in *R v Kerr* 26.8.99 CA195/99 records:

> "... between (March 1998) and June 1998 no less than four breaches of the (protection) order occurred, as a result of which the longest and last sentence imposed was five months imprisonment ..."

[16] The plaintiff first breached the protection order on 18 March 1998, a breach for which he was sentenced to four months imprisonment in the District Court at

Wellington on 30 April 1998. That was the "cliff top" incident referred to in the newspaper article. I will revert to that incident in more detail when dealing with the plaintiff's allegation that the article defamed him by stating that he had threatened to drive his car over the edge.

Ground 2: Master wrong to find evidence that plaintiff's reputation was not good

[17] In his decision, Master Gendall referred to the defendants' indication that they intended calling evidence that the plaintiff's reputation is poor. The Master said:

> "[40] I am satisfied that there is significant material already before the Court to suggest that the plaintiff's reputation in both domestic and general matters is not generally good. That said, I am satisfied that the plaintiff's claim therefore has little prospect of success."

[18] The plaintiff submits that this statement is inaccurate. As the Master was expressing a view, not stating a fact, the question is whether that view was justified. I see three grounds on which the Master could properly form the view that the defendants would, at trial, be able to establish that the plaintiff's reputation in both domestic and general matters was not generally good. Those three grounds are:

[a] In 1997 the plaintiff was found guilty by the District Court in Wellington on two charges of being without reasonable excuse in an enclosed yard. An appeal to the High Court was dismissed by Doogue J on 3 September 1997. First the High Court (Goddard J on 15 October 1997) and subsequently the Court of Appeal (*R v Kerr* 26.3.98 CA452/97) refused the plaintiff leave to appeal to the Court of Appeal. Those two offences form part of the basis for the plaintiff's disqualification from taxi driving dealt with in the next paragraph.

[b] On 31 July 1997 the District Court at Wellington, on appeal from a decision of the Director of Land Transport Safety, disqualified the plaintiff from driving any transport service vehicle (such as a taxi) for

three years (*Kerr v Director of Land Transport Safety* 18.7.97 District Court at Wellington MA100/97). This represented a substantial reduction from the 10 year disqualification which the Director had imposed. A Full High Court dismissed the plaintiff's appeal (*Kerr v The Director of Land Transport Safety* 6.11.98 HC Wellington AP276/97) on 6 November 1998. There was, before the District Court, evidence of a number of incidents involving women passengers while the plaintiff was driving taxis. In dismissing the appeal, the High Court concluded:

> "We think it axiomatic that where the licence holder has shown a pattern of behaviour of a class that if applied to taxi passengers would cause those passengers a discomfort or alarm concerning their own safety, that is indeed demonstrative of an unfitness to hold a taxi licence in terms of section 24 where the public safety and public interest are primary considerations. In this case the words in the passage quoted must be read with the prior findings at p9 that "the conduct of the appellant is not consonant with the proper safety of the travelling public" and is "inconsistent in particular with his responsibility to convey unaccompanied women to private addresses with courtesy and security and without fear or alarm"."

[c] As outlined, the plaintiff has five convictions for breaching, between March and November 1998, the order protecting his wife. The plaintiff accepts that, following the breakdown of his marriage in 1997, he behaved badly toward his wife and children. A reading of the High Court's judgment on appeal against the sentence of four months imprisonment imposed by the District Court for the first breach (*Kerr v Police* 17.6.98 HC Wellington AP123/98) and of the Court of Appeal's judgment of 26 August 1999 (referred to in paragraph [15] above) in respect of the fifth breach, makes that concession by the plaintiff of bad behaviour a proper, if inevitable one.

[19] To summarise, the plaintiff has convictions for his conduct toward women passengers while driving taxis, and was disqualified from driving any transport

service vehicle for three years. He also has five convictions for breaching the order protecting his wife and one conviction for burglary for forcibly smashing his way into his wife's home. In combination, I consider this record justifies the Master's view that there was already before the Court material which would enable the defendants, at trial, to establish that the plaintiff's reputation "in both domestic and general matters is not generally good".

Ground 3: Master wrong in relation to commencement and prosecution of proceeding

[20] In his decision the Master states:

> "[45] The newspaper report complained of was published on 5 November 1998, and the plaintiff did not commence this proceeding until 5 May 2000. It is now almost three years later, and the matter still remains unheard.
>
> ...
>
> [47] Further, the defendants noted that the plaintiff has repeatedly breached timetabling orders over the history of this proceeding.
>
> [48] In my view, there is substance in these claims. ..."

[21] The plaintiff submits that this is incorrect. The Court record of this proceeding, combined with information provided by the plaintiff, establishes that the correct position is as follows:

[a] 5 November 1998: allegedly defamatory article published – the Master is correct.

[b] 29 January 1999: plaintiff attempts to commence a proceeding in this Court. The statement(s) of claim he posted to the Court, not accompanied by any filing fee, was rejected by the Registrar as not complying with the High Court Rules. In responding by letter to the plaintiff, the Registrar suggested that the plaintiff apply for legal aid – the Master did not refer to this, apparently because he was not aware of it.

[c] (Approximately) 8 March 2000: the plaintiff applies for legal aid following his release from prison.

[d] 2 May 2000: proceeding transferred to High Court pursuant to s 43(1) District Courts Act 1947, on first defendant's application.

[e] 5 May 2000: proceeding claiming damages for defamation commenced by the plaintiff in the District Court – the Master is correct.

[f] 1 August 2000: Master Thomson orders that the parties are to complete discovery by 29 August 2000, and inspection by 12 September 2000.

[g] 18 September 2000: plaintiff files unverified List of Document (the first defendant filed its List of Documents on 5 October 2000; the second defendant on 23 August 2000).

[h] 25 September 2000: Master orders plaintiff to file a verified List of Documents by 23 October 2000. Plaintiff fails to do so.

[i] 3 November 2000: second defendant applies for further and better discovery by plaintiff.

[j] 1 March 2001: following a defended hearing on 31 January 2001, Master Thomson orders plaintiff to make further discovery by 22 March 2001.

[k] 9 April 2001:

[i] Plaintiff files supplementary List of Documents.

[ii] Plaintiff applies to reinstate proceeding on ground that his delay in filing the supplementary List of Documents can be reasonably explained.

[l] 24 April 2001: Master Thomson reinstates proceeding, and adjourns it to 8 May 2001 for timetabling.

[m] 8 May and 5 June 2001: proceeding further adjourned by Master Thomson.

[n] 10 July 2001; 14 August 2001: minutes of Master Thomson record that further discovery (in particular of Family Court documents) by plaintiff has not been completed.

[o] 5 August 2002: plaintiff's solicitor, Ms Ainslie Hewton, seeks leave to withdraw. Master Gendall orders plaintiff to file an address for service by 20 August 2002 and schedules further conference for 4 September. The Master's minute notes that counsel for both defendants "have … signalled that they intend to make an application for security for costs against the plaintiff".

[p] 4 September, 17 October and 3 December 2002: further teleconferences with Master Gendall. At these conferences Ms Hewton was seeking to withdraw as the plaintiff's solicitor, and had on 20 September 2002 applied for an order declaring that she was no longer the plaintiff's solicitor on the record, but the plaintiff had not filed an address for service.

[q] 25 November 2002: second defendant applies for security for costs.

[r] 28 November 2002: first defendant applies for security for costs.

[s] 3 December 2002: Master Gendall orders:

[i] The proceeding is to be struck out unless the plaintiff files an address for service by 10 December 2002.

[ii] The plaintiff is to file and serve by 31 January 2003 any opposition to the defendants' applications for security for costs.

[t] 9 December 2002: plaintiff files an address for service, but fails to serve it on the defendants.

[u] 31 January 2003: deadline for plaintiff's opposition to defendants' security for costs application passes. Nothing filed by plaintiff.

[v] 14 March 2003: hearing date for defendants' applications for security for costs. Both defendants appeared and were ready to proceed. No appearance by the plaintiff, although counsel informed the Court that they had seen the plaintiff in a car outside the Court. Master orders that proceeding is likely to be struck out unless plaintiff serves address for service on defendants and files and serves opposition to their security for costs application by 1 April 2003. Sets those security for costs applications down for hearing on 8 April 2003.

[w] 8 April 2003: security for costs applications heard. It is the Master's judgment of 10 April 2003 deciding those applications which I am reviewing in this judgment.

[22] The result of steps [f] to [u] set out above is that the Master was correct in stating that the plaintiff had "repeatedly breached timetabling orders".

[23] The Master's comments about the plaintiff's delay in commencing and prosecuting this proceeding are correct. Those comments are incomplete only in not referring to the plaintiff's unsuccessful attempt to commence a proceeding on 29 January 1999 i.e. some three months after the allegedly defamatory article. As I have said, the Master was apparently unaware of that attempt.

Ground 4: Master wrong in finding that article was accurate in stating plaintiff had "threatened to drive his car ... over the edge"

[24] This is the second aspect in which the plaintiff claims he was defamed in the 5 November 1998 newspaper article.

[25] The plaintiff submits the Master was wrong in stating that the article was accurate in this respect. The plaintiff based that submission on findings of fact made by Judge Maclean in the District Court at Wellington on 22 April 1998. These findings were consequent upon the plaintiff pleading guilty to breach of the protection order on 18 March 1998 – the "cliff top" incident – but disputing the Police summary of facts. The plaintiff referred to that part of Judge Maclean's findings which I have shown in bold in the following paragraph:

> "***In summary, it seems to me that what happened falls short in fact of manifesting a clear unequivocal intention to take off down the hill if the defendant did not get his way***, but can be at least construed as imperilling to some extent the safety, particularly of his daughter, and to an extent to himself and to some extent simply using the vulnerability of the situation, and really the helplessness of the officer on the spot to do anything much about it, to some sort of advantage for negotiating purposes, albeit simply clearly in the event he was never going to get away from there. He was going to have to be dealt with by the police sooner or later and, as I say, to his credit eventually he agreed to co-operate."

[26] The bold portion must be read in its context in the paragraph. And the paragraph must be read in its context in the whole of the Judge's findings. They occupy some 11½ pages, and I note that pages 2-4 inclusive are missing from the copy provided to me by the plaintiff. However, the following description appears at pages 5-6 of the Judge's findings:

> "So, Sergeant Chenery says he was faced with a difficult situation. The defendant acknowledges that he had been followed by police cars up to the headland, that his car was parked there. He acknowledges, does the defendant, that when stopped earlier he had refused to get out of the car. He acknowledges that when Sergeant Chenery approached he refused to let down the windows or open the car, and it is agreed by both Sergeant Chenery and the defendant that the Sergeant then rapped on the back window of the car making it clear that if he was not allowed access then he would smash the window in. Now, in the event the Sergeant backed off when he formed the perception, no doubt to his horror, that perhaps the defendant was planning to send the car down the hillway, 50 to 60 metres down a rough track, which then ended in another clearing, then quite close to an abrupt drop down on to the motorway. It is quite clear, and one

> can sense it even today, that the Sergeant faced with that possibility his only option was at that point to back off, to avoid precipitating any crisis, and in the event, to the credit of both the defendant and no doubt to the negotiating skills of the follow-up police intervention, the whole situation was eventually defused and fortunately the little girl, whether she was at any risk or not, that risk was entirely removed and the defendant went to the police station.
>
> Now, the disputed areas of fact are actually quite narrow. The Sergeant's perception of this inferred threat was based essentially on three things.
>
> One, that he observed, he said, the defendant to raise his arm and point out to sea from which the Sergeant concluded that that was a signal that in some way that is what the defendant was intending to do unless he, the Sergeant, backed off.
>
> Secondly, that at some stage the car began to move forward.
>
> Thirdly, that at some stage the defendant put his hands up to the steering wheel and from that combination of facts the Sergeant, quite understandably in that instant, became seriously concerned about the possible ramifications of all that and, as I say, backed off."

[27] Judge Maclean then dealt with each of those three disputed areas of fact. He found that the car did move forward, albeit to a small extent and slowly. He found that the plaintiff did put his hands on the steering wheel. As to the gesture (the Sergeant's observation that Mr Kerr raised his arm and pointed out to sea) the Judge held:

> "On the evidence before the Court today it is impossible to reach any definite conclusion as to whether he did actually raise his arm in a way as to indicate an intention to, as it were, head for the sea, or whether his arm moved in some way that perhaps was, in the understandable circumstances, misconstrued by the Sergeant."

[28] Those findings of fact are, in my view, as close to the truth of the matter as any Court will ever be able to get. I say that for three reasons. First, those findings were made by a Judge following a hearing held for the express purpose of establishing what the facts were. Secondly, that hearing took place on 22 April 1998, a little over a month after the critical events. Those events were comparatively fresh then in the minds of the two key witnesses, Mr Kerr and Sergeant Chenery. They will certainly not be fresh in the minds of those two witnesses if and when this matter ever gets to trial. Five and a half years have already gone by since those

critical events occurred, and there now exists the distinct risk that, in trying to recall the events, one or both of the key witnesses may reconstruct matters. Thirdly, the Judge heard and observed the two key witnesses recount the events when they were fresh in the witnesses' minds.

[29] Judge Maclean's findings make two things clear:

[a] What the plaintiff actually intended to do, and whether – notwithstanding his actual intentions – he intended or attempted to convey to Sergeant Chenery the impression that he was threatening to or might drive the car over the edge, could not be ascertained with certainty.

[b] The plaintiff's conduct caused Sergeant Chenery to perceive that the plaintiff was threatening to drive the car over the edge, or might do so.

[30] Accordingly, in my view, the newspaper article was not false or inaccurate, and was accordingly not defamatory, in stating that the plaintiff "threatened to drive his car, containing his three year old daughter, over the edge on to the Hutt motorway". That, at the very least, was Sergeant Chenery's reading of the situation, and he was the person on the spot. It follows that the Master was not wrong in stating that the article was accurate in this respect.

Ground 5: Master wrong in finding that the threshold test under r 60(1)(b) was met

[31] What is regularly referred to as "the threshold test" requires a Court, before ordering security for costs, to be satisfied "that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding" (r 60(1)(b)).

[32] The Master held:

> "[20] The threshold test in Rule 60(1)(b) as to the plaintiff's impecuniosity has been met here.

> [21] Before me the plaintiff acknowledged that he is not employed. As a student his only income is from a benefit."

[33] The plaintiff submitted that the Master erred in finding the threshold test had been met. He argued that he had committed himself to giving security to the defendants for their costs at a minimum of $10 per week. He pointed out that there is nothing in the Rules limiting the time to pay costs. He argued additionally that "the test was not necessary since I show that even with a low income I was able to pay a minimum amount should costs be ruled against myself".

[34] He referred to the commentary in *McGechan on Procedure* (now part of para HR60.05) to the effect that difficulty in paying costs is not to be equated with inability to do so. That passage refers to *NZ Kiwifruit Marketing Board v Maheatataka Cool Pack Ltd* (1993) 7 PRNZ 209. The point it is making is that the threshold test is not met where a plaintiff owns reasonably readily realisable assets which would produce sufficient money to meet any order for costs that might be made against the plaintiff if its proceeding fails. Here, on his own admission, the plaintiff has no such assets.

[35] The Master was correct to find the threshold test met here.

Ground 6: Security of $25,000 excessive

[36] The plaintiff submitted that, at this stage of the proceeding, awarding security for costs in the amount of $25,000 "is wrong and unjust and certainly not in the interest of justice".

[37] I do not accept that. For at least seven reasons, I consider $25,000 (or $12,500 for each of the two defendants) was well within the Master's discretion as to quantum. Those reasons are:

[a] The plaintiff's own costs, as submitted by his previous solicitor, Ms Hewton, to what is now the Legal Services Board, amounted to some $12,000. Those costs covered the period from the grant of legal aid in or about March 2000 to the termination of legal aid. The latter date is

a little uncertain. There is evidence that Ms Hewton was advised on or about 4 February 2002 that legal aid had been withdrawn. There is also evidence indicating that Ms Hewton sought reconsideration of this decision and that she remained involved, at least in teleconferences with the Master, through to 17 October 2002. It appears Ms Hewton's bill to the Legal Services Board was rendered early this year.

[b] Ms de Graaff advised me that the first defendant's costs to date are a fraction short of $20,000, and its estimate of costs through to the end of trial a total of $32,500 (i.e. a further $12,500).

[c] The second defendant's costs to date are $25,000, and its estimate to the end of trial $40,000.

[d] The plaintiff estimates that the trial will take three days. The defendants' estimate, certainly that of the first defendant, is closer to five days, allowing for the evidence the defendants propose calling.

[e] Ms de Graaff drew attention to s 43(2) of the Defamation Act which provides:

> "(2) In any proceedings for defamation, which –
>
> (a) Judgment is given in favour of the plaintiff; and
>
> (b) The amount of damages awarded to the plaintiff is less than the amount claimed; and
>
> (c) In the opinion of the Judge, the damages claimed are grossly excessive, -
>
> the Court shall award the defendant by whom the damages are payable the solicitor and client costs of the defendant in the proceedings."

As I have pointed out, the plaintiff claims damages of $75,000 against the first defendant.

[f] Mr Hopkinson had, before the Master, pointed to the $25,000 security fixed by Chisholm J in *Hudson Hill v Anthony Morrison & Ors* 12.12.02 HC Christchurch CP30/02. That was a defamation claim against (effectively) two defendants, each of whom had estimated their 2B costs for a three day trial at $26,260 i.e. a total of $52,520. Chisholm J fixed security at $12,500 for each defendant, a total of $25,000.

[g] The plaintiff's complaint is not so much with the $25,000 figure, but that he has no ability to pay any substantial lump sum by way of security for costs. He made it clear that he would be happy to give security of $25,000 if he were able to do so. He has essentially translated his inability to give any security for costs into a submission that the $25,000 figure is excessive.

Result

[38] I am not satisfied the Master was wrong in deciding that this was an appropriate case to require the plaintiff to give security for the defendants' costs, or that the Master erred in fixing security at a total of $25,000.

[39] As to requiring the plaintiff to give security for costs, I agree with the Master's assessment that the plaintiff has little prospect of being awarded any damages for defamation. I do not agree with the Master's assessment that there is a "very low probability of a substantial award". In my assessment, the plaintiff has no prospect of being awarded substantial damages, because no jury would hold that the article in question had substantially damaged the plaintiff's reputation.

[40] As to quantum, I consider $25,000 appropriately strikes the required balance between an impecunious plaintiff seeking to advance a weak and much delayed claim, and two defendants who are at risk of not being able to recover any costs

awarded to them which are not secured if, as I think is likely, the plaintiff's claim fails at trial.

[41] I would have ordered the plaintiff to give the $25,000 security within three months. The order made by the Master carries the risk that the plaintiff may be able to take to trial in or about 2006 a claim which, by then, would be about eight years old and completely stale. However, I decline to interfere with the Master's order, save to make it clear that each quarterly instalment ordered by the Master is to be paid into Court by due date. Any default entitles the defendants to apply under r 277 for an order that the proceeding be dismissed. So that there is no doubt as to the position, I direct that the quarterly payment which fell due on 10 July 2003 (and which presumably has not been paid into Court pending a decision on this review application), and the next payment which falls due on 10 October 2003, are ***both*** to be paid into Court by 10 October 2003 at the latest i.e. a total of $4,166.66 is to be paid into Court by 10 October 2003. Further instalments will be payable on their due dates.

[42] Each defendant is entitled to its costs of this review application on a 2B basis.

J.R. Wild J.

Judgment delivered at 4.30 p.m. on 24 September 2003

Solicitors

Crown Law Office, Wellington for the First Defendant

Izard Weston, Wellington for the Second Defendant