

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

CIV-2008-485-2315

BETWEEN	ERIN A LEIGH Plaintiff
AND	THE ATTORNEY-GENERAL First Defendant
AND	LINDSAY GOW Second Defendant

On papers

Judgment: 1 October 2009

**JUDGMENT OF DOBSON J
(Costs)**

[1] I have had referred to me the Memorandum dated 3 September 2009 on behalf of the defendants seeking costs, and the Memorandum dated 21 September 2009 on behalf of the plaintiff opposing that course.

[2] My judgment on the defendants' strike out application dated 14 July 2009 is subject to appeal by the plaintiff, and cross-appeal on behalf of the defendants.

[3] The parties have been unable to agree costs. The defendants ask that I fix costs, on the basis that they were substantially successful in the matters determined on their strike out application.

[4] The plaintiff disputes the extent to which the defendants succeeded on their application before me. Further, the plaintiff contends that the defendants' conduct expanded the scope of work required in relation to the application in respects where

the defendants did not succeed. Because, on the plaintiff's view, both parties were successful to some degree, it is submitted on her behalf that costs should lie where they fall.

[5] The terms of my judgment reflect a materially greater measure of success for the defendants, than for the plaintiff. In round terms, I consider that there has been about two thirds success on behalf of the defendants. If I apply that to reduce what would otherwise be the costs' entitlement had the defendants succeeded completely, I would also treat it as sufficient to account for extra work required of the plaintiff on aspects of the argument where the defendants were unsuccessful.

[6] I accept the plaintiff's objection to the inclusion by the defendants in their schedule seeking costs of the item under 4.11 for appearance at a conference. That is not specifically in relation to the interlocutory application determined in my judgment.

[7] I accordingly fix the defendants' costs' entitlement as follows:

Amount sought on 2B category costs	\$6,680
Less item 4.11	<u>480</u>
	\$6,200
Two thirds of \$6,200	\$4,132

[8] I direct at the plaintiff's request that having fixed costs, they are not to be paid pending the outcome of the appeal.

Dobson J

Solicitors:
Wilson Harle, Auckland for plaintiff
Oakley Moran, Wellington for defendants