

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 31  
EMPC 425/2021**

IN THE MATTER OF	an application for judicial review
AND IN THE MATTER OF	an application for stay of proceedings
AND IN THE MATTER OF	an application for extension of time to file submissions on costs
AND IN THE MATTER OF	an application for costs on application to strike out proceedings
BETWEEN	ALLAN GEOFFREY HALSE Applicant
AND	EMPLOYMENT RELATIONS AUTHORITY First Respondent
AND	NEW PROGRESS ENTERPRISES CHARITABLE TRUST BOARD OPERATING AS PROGRESS TO HEALTH Second Respondent
AND	CULTURES SAFE NEW ZEALAND LIMITED (IN LIQUIDATION) Third Respondent

Hearing: On the papers

Appearances: Applicant in person  
No appearance for first respondent  
M Hammond, counsel for second respondent  
No appearance for third respondent

Judgment: 28 February 2024

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**JUDGMENT OF JUDGE KATHRYN BECK**  
**(Application for stay of proceedings)**  
**(Application for extension of time to file submissions on costs)**  
**(Application for costs on application to strike out proceedings)**

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[1] The applicant, Allan Halse, seeks a stay of proceedings in respect of an application for costs brought by the second defendants, New Progress Enterprises Charitable Trust Board operating as Progress to Health (Progress to Health). Mr Halse also seeks leave to file submissions out of time in opposition to the application for costs from Progress to Health. This decision resolves those applications, including Progress to Health's application for costs.

### **Background**

[2] These proceedings have a lengthy and protracted procedural history. They stem from personal grievance proceedings filed in the Employment Relations Authority in January 2020 by Mr Halse on behalf of a former employee of Progress to Health and from a counterclaim filed in February 2020 by Progress to Health against both its former employee and Mr Halse. The counterclaim involves a claim that the former employee breached their employment agreement and that Mr Halse aided and abetted in that breach.<sup>1</sup>

[3] On 26 November 2021, Mr Halse filed judicial review proceedings in which he sought review of the Authority's decision to allow proceedings to be brought against him.<sup>2</sup>

[4] Progress to Health then applied for Mr Halse's judicial review proceedings to be struck out.<sup>3</sup> The application was heard in April 2022.

[5] Mr Halse applied to stay the strike-out proceedings pending filing what he considered to be related proceedings in the Court of Appeal. That stay application was scheduled to be heard on 10 February 2023.

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<sup>1</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 96, [2023] ERNZ 397 at [2]–[4].

<sup>2</sup> At [8].

<sup>3</sup> At [9].

[6] Mr Halse then applied to adjourn that hearing in regard to the stay and sought an extension of time to file further submissions. Those applications were declined.<sup>4</sup>

[7] The first stay application was heard on 10 February 2023. It was declined.<sup>5</sup>

[8] Mr Halse then applied to file further submissions in relation to the strike-out application. This was dealt with on the papers and declined.<sup>6</sup>

[9] On 21 June 2023, the Court struck out Mr Halse's judicial review proceedings and indicated that Progress to Health was entitled to costs on a category 2B basis.<sup>7</sup>

[10] On 12 July 2023, Progress to Health filed an application for scale costs totalling \$17,088.50. Any response from Mr Halse was due on 26 July 2023. Mr Halse then applied for leave to appeal the Court's decision of 21 June 2023 and sought a stay of proceedings and an extension of time to file submissions on costs. A stay was granted on 24 November 2023, as was an extension of time to file costs submissions if leave to appeal was not granted.<sup>8</sup>

[11] The stay lapsed when the Court of Appeal refused Mr Halse's application for leave to appeal on 1 December 2023.<sup>9</sup>

[12] The Court's stay decision of 24 November 2023 stated that if Mr Halse's application for leave to appeal was unsuccessful, he would have seven days to file any submissions on Progress to Health's application for costs.<sup>10</sup> No submissions on the issue of costs have been received from Mr Halse.

[13] On 14 December 2023, Mr Halse filed another application for a stay of proceedings and a further application for an extension of time to file submissions in opposition to the application for costs filed by Progress to Health.

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<sup>4</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 8.

<sup>5</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 53.

<sup>6</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 93.

<sup>7</sup> *Halse v Employment Relations Authority*, above n 1, at [58] and [61].

<sup>8</sup> *Halse v Employment Relations Authority* [2023] NZEmpC 212.

<sup>9</sup> *Halse v Employment Relations Authority* [2023] NZCA 611.

<sup>10</sup> *Halse v Employment Relations Authority*, above n 8, at [35].

[14] On 15 December 2023, Progress to Health filed a memorandum seeking that Mr Halse's latest applications be declined on the basis that he was seeking to re-litigate matters already decided.

[15] Mr Halse was given until 15 January 2024 to respond.

[16] In a memorandum dated 19 December 2023, Progress to Health raised concerns about the ongoing delays, breach of timetable directions and re-litigation of all matters. It sought that Mr Halse's application for a stay be dismissed and for a decision on costs to be issued.

[17] Mr Halse responded on 25 January 2024. Progress to Health has filed nothing further.

### **Mr Halse applies for a stay**

[18] Mr Halse applies for a stay on the basis that he has filed judicial review proceedings in the Court of Appeal in respect of a decision of another Judge of the Employment Court and is also considering filing judicial review proceedings against judgments of other Judges. He has not provided a copy of that application or of the proposed applications. However, the Court is aware of the proceedings he has filed.

[19] Mr Halse has set out the topics that he intends to traverse in those applications. He asserts that the Court lacks jurisdiction to strike out judicial review applications due to his statutory rights under s 27 of the New Zealand Bill of Rights Act 1990 and s 187(2) of the Employment Relations Act 2000 (the Act). He also asserts that a decision maker must file a statement of defence under s 10(1) of the Judicial Review Procedure Act 2016.

[20] Additionally, Mr Halse submits that should the Court of Appeal find in his favour in other proceedings, Progress to Health would not be in a position to seek costs for a strike out application which they had no legal authority to file and which the Court had no jurisdiction to entertain.

[21] Mr Halse’s application cannot succeed. In respect of each of his assertions, the Court of Appeal has already found, in the context of this set of proceedings, that none of those questions is seriously arguable.<sup>11</sup> In light of that finding, even if the Court of Appeal were to decide differently in other proceedings, its decision in the present case will still be the relevant and binding authority for these proceedings. Therefore, it is not inappropriate for the Court to consider the issue of costs.

[22] Further, Mr Halse fails to acknowledge that his proceedings were originally struck out by the Court on the basis that it did not have jurisdiction to consider his claims as a result of the effect of s 184(1A) of the Act. He does not indicate anywhere that he intends to argue this point in the Court of Appeal. Therefore, even if he were successful in all of his other claims, the Court still did not have jurisdiction to consider his original judicial review application as the Authority had not yet issued a determination in relation to the substantive matters underlying the review application.<sup>12</sup>

[23] Accordingly, Mr Halse’s application for a stay is declined as he has not provided any compelling reasons in support of it.

[24] Progress to Health is entitled to a determination of its claim for costs.

### **Mr Halse applies for leave to file submissions out of time**

[25] Mr Halse also seeks leave to file late submissions in opposition to the application for costs filed by Progress to Health.

[26] Progress to Health filed its application for costs on 12 July 2023. In the Court’s judgment of 21 June 2023, Mr Halse was directed to respond by memorandum filed and served within 14 days of that date.<sup>13</sup> However, instead of filing an application for costs by 26 July 2023 as required, he filed an application for a stay on 25 July 2023 and an application for an extension of time to file submissions on costs.

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<sup>11</sup> *Halse v Employment Relations Authority*, above n 9, at [27]–[35].

<sup>12</sup> At [31].

<sup>13</sup> *Halse v Employment Relations Authority*, above n 1, at [61].

[27] As already noted, the Court granted the stay and an extension of time to file submissions. Mr Halse was advised that once the stay lapsed, he would have seven days to file any submissions on Progress to Health's application for costs.<sup>14</sup> He was reminded by the Registry of the timetable for filing costs. The stay lapsed on 1 December 2023. No submissions were received from him within the seven-day timeframe or at any time thereafter.

[28] In a memorandum filed on 25 January 2024, but which ought to have been filed by 15 January 2024, Mr Halse indicated that he has been under an extremely heavy workload and that he has had business difficulties, impacting on file management. However, those difficulties are recent and do not explain why submissions on costs were not filed by 8 December 2023, particularly when he received a reminder from the Court to do so on 1 December 2023.

[29] The Court can extend the time within which anything may be done upon such terms as it thinks fit.<sup>15</sup> However, where an application is made to file documents late, the proper procedure is to file the proposed documents in draft form, along with the application to file the documents late. At the very least, there ought ordinarily to be some indication of what the proposed documents are likely to say.

[30] The Court has some insight into Mr Halse's views from his previous application for an extension of time to file submissions.<sup>16</sup> However, in his current application there is nothing about what he would say in response to Progress to Health's submissions on costs.

[31] It is also appropriate, out of respect to both other parties and the Court, to provide by way of affidavit either justification or explanation as to why the Court's

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<sup>14</sup> *Halse v Employment Relations Authority*, above n 8, at [35].

<sup>15</sup> Employment Relations Act 2000, s 221(c).

<sup>16</sup> Applicant's submissions on stay dated 28 August 2023.

timetable could not be met.<sup>17</sup> However, the basis for the extension seems to be solely that an application for a stay has been filed.<sup>18</sup> That is not a sufficient justification for failing to comply with the Court's timetable.

[32] Mr Halse has already been granted an extension. He has not provided any good reasons or documentation to support his further application to file documents out of time, in circumstances where he was explicitly informed of the Court's timetable. It is not in the interests of justice for a further extension to be granted. His application is declined.

### **Progress to Health applies for costs**

[33] Progress to Health applies for \$17,088.50 in scale costs. That application relates to all of the costs arising from Mr Halse's unsuccessful application for judicial review, including Progress to Health's successful strike-out application, his unsuccessful application for a stay in relation to the strike out application, and his unsuccessful application to file further submissions in respect of the strike out application.

[34] Progress to Health has calculated its costs on a category 2B basis.<sup>19</sup> Mr Halse has suggested (in earlier documentation) that some of the items claimed might be more fairly calculated on a category 2A basis rather than a category 2B basis. However, there was no specificity as to which items he referred to. Having reviewed the costs table prepared by counsel, and in the context of the various procedural matters dealt with, I consider category 2B to be appropriate. The unsuccessful applications made by Mr Halse to which the costs claim relates were without merit. I consider that the amount claimed of \$17,088.50 is reasonable on an overall basis.

[35] Progress to Health did not initially provide any indication of what its actual costs were; however, it is not necessary for an applicant to disclose their actual costs,

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<sup>17</sup> Employment Court of New Zealand Practice Directions <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 7.

<sup>18</sup> Applicant's application for stay dated 14 December 2023 at [27].

<sup>19</sup> Employment Court of New Zealand Practice Directions, above n 17, at No 18.

particularly where no claim has been brought for indemnity costs or increased costs.<sup>20</sup> In any case, it has subsequently advised that its total costs were \$29,132.<sup>21</sup>

[36] A party cannot claim any more than its actual costs, so it can assist the Court to receive at least some assurance that the claimed costs are lower than the applicant's actual costs.<sup>22</sup> Counsel's memorandum has resolved that issue.

[37] Accordingly, I consider the sum of \$17,088.50 is appropriate in all the circumstances.

### **Conclusion**

[38] Mr Halse's applications for a stay of proceedings and for an extension of time to file submissions are declined.

[39] Progress to Health's application for costs is successful.

[40] I order Mr Halse to pay Progress to Health \$17,088.50 within 21 days of the date of this judgment.

[41] Costs will lie where they fall on this matter.

Kathryn Beck  
Judge

Judgment signed at 3 pm on 28 February 2024

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<sup>20</sup> *Xtreme Dining Ltd, (t/a Think Steel) v Dewar* [2017] NZEmpC 10, [2017] ERNZ 26 at [26]; see also *Health Waikato Ltd v Elmsly* [2004] 1 ERNZ 172 (CA) at [50], which noted that an applicant's actual costs are not usually relevant where scale costs are being claimed in the High Court; that was in contrast to the Employment Court's previous costs regime that has now been replaced by the Court's guideline scale, see the Employment Court of New Zealand Practice Directions, above n 17, at No 18.

<sup>21</sup> Memorandum dated 26 February 2024.

<sup>22</sup> *Cornish Truck & Van Ltd v Gildenhuis* [2019] NZEmpC 57 at [9].