

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2015-485-467
[2017] NZHC 2024

BETWEEN X
Plaintiff

AND THE ATTORNEY GENERAL OF NEW
ZEALAND
First Defendant

AND MINISTRY OF DEFENCE (UNITED
KINGDOM)
Second Defendant

Hearing: On Papers

Counsel: J L Bates for Plaintiff
A Martin and J Catran for First Defendant
A S Butler for Second Defendant

Judgment: 23 August 2017

**JUDGMENT OF SIMON FRANCE J
(Costs)**

[1] I thank counsel for their memoranda which are refreshingly direct and to the point.

Costs payable by the Attorney-General of New Zealand in relation to the protest as to jurisdiction

[2] It is always possible to identify points of success, or conversely unsuccessful arguments made along the way. I accept the first defendant's "practical solution" was advanced in good faith as a way forward. However, it was premised on the unsuccessful proposition that the plaintiff could not advance in New Zealand her claims about events occurring to her in the United Kingdom. Various underlying reasons were advanced, all unsuccessful. The plaintiff had complete success on this aspect.

[3] However, I accept there was success in relation to the battery claim. Further, the underlying basis for the contention that AGNZ was jointly liable was a matter of some complexity. Although the fate of the battery claim in relation to AGNZ was much influenced by what happened with the Ministry of Defence, it remains the case that AGNZ succeeded on this aspect. I consider it merits a modest recognition in the costs award. Otherwise, the plaintiff succeeded and its entitled to an award. I do not agree that the need for repleading merits cost recognition.

[4] The plaintiff is entitled to an award of 85 per cent of scale costs, fixed on a 3C basis. I do not consider the appropriateness of a 3C band is seriously contestable.

Costs payable by plaintiff in relation to reputational claims

[5] Costs are sought on a 3B basis. That is appropriate for this aspect of the hearing.

[6] I have no record of how long that argument took. My recall is less than half a day but how long I could not say. Counsel will need to agree if the formal record does not disclose it.

[7] As matters presently stand consequent on the judgment, the reputational claims are struck out. I see no reason why the costs incurred in relation to the statement of defence step should not be recoverable.

[8] The allocation of half costs for some items seems to me a reasonable approach.

[9] Subject to the issue of hearing length, the first defendant is entitled to the costs claimed.

Costs payable to Ministry of Defence (United Kingdom)

[10] It is unclear to me whether there is any dispute. However, I confirm 3B costs are appropriate, being the band sought. As noted above, it would have been possible to contend for a higher band, so I observe the second defendant's claim is a particularly reasonable one.

A handwritten signature in black ink, appearing to read "Simon France J", written over a horizontal line.

Simon France J