IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV 2009 409 002685

BETWEEN	CHRISTOPHER NEILL PARKIN Plaintiff
AND	THE CROWN SOLICITOR AT CHRISTCHURCH First Defendant
AND	THE DISTRICT COURT AT CHRISTCHURCH Second Defendant

Hearing: 22 March 2010

Appearances: P N Allan for Applicant
A M Powell for First Defendant

Judgment: 22 March 2010

ORAL JUDGMENT OF CHISHOLM J

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[1] This application for judicial review arises from the rescheduling of the plaintiff's trial in the District Court. It is alleged that in all the circumstances the rescheduling without the involvement of the Court was unlawful and constituted a breach of natural justice.

Background

[2] Last year the Crown Solicitor at Christchurch (the first defendant) laid an indictment in the District Court (the second defendant) against the plaintiff. It contained three counts: male assaults female; injuring with intent to injure; and wounding with intent to cause grievous bodily harm. A plea of not guilty was

entered. The plaintiff had been in custody since December 2008. He was represented by counsel, Mr Starling.

[3] In accordance with a trial scheduling process primarily administered by the Christchurch Crown Solicitor's office, Mr Parkin's trial was scheduled to commence on 2 November 2009. An earlier date had been abandoned. At a pre-trial callover on 27 October Judge Farish confirmed that Mr Parkin's trial would be the first trial for the forthcoming week commencing on 2 November. It was scheduled for three days.

[4] As a result of subsequent developments concerning other trials the Crown Solicitor's office decided that some rescheduling, which involved Mr Parkin's trial as well as other trials, was necessary. Mr Starling was advised by email from the Crown Solicitor's office that Mr Parkin's trial was being rescheduled, but without any further explanation. He questioned the need for the adjournment but received no response.

[5] On the morning of the trial Mr Starling decided to check and see if the prisoner was in the cells. It transpired that an order to produce had either been cancelled or not proceeded with, presumably on the say so of the Crown Solicitor's office. In any event Mr Parkin was not at Court. It also transpired that the Crown Solicitor's office had cancelled the witnesses for the trial. Needless to say the trial did not proceed on 2 November.

[6] The following day Mr Parkin appeared before Judge Crosbie at a further trial callover. The prosecutor told the Judge that the trial would not be going ahead that week and proposed a fixture for April 2010. Not surprisingly Mr Starling protested, advising the Court that he was ready to proceed. The Court directed the prosecutor to find an earlier date and stood the matter down to the following day.

[7] On 4 November Mr Stanaway, Crown Solicitor for Canterbury, appeared in person and apologised for the events that had occurred (replacing the trial with another trial and adjourning it without consultation with the Court). Although displeasure was expressed, the apology was accepted by the Court. The matter was

put off to the following day to enable further steps to be taken in unravelling the tangle.

[8] The problem was that the new date for the Parkin trial now proposed by the Crown (23 November 2009) clashed with another multi-accused trial fixture involving Mr Starling. In the end result the Parkin trial proceeded that week but the other fixture had to be put off. Part way through the trial Mr Parkin pleaded guilty and was sentenced. There is no suggestion that the rescheduling problems influenced that outcome in any way.

[9] The plaintiff seeks the following declarations:

> 40. A declaration that the arrangement is unlawful.
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> 41. A declaration that the purported adjournment was invalid.
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> 42. A declaration that the plaintiff's trial ought to have proceeded on the 2nd of November 2009/

[10] It is accepted by the first defendant that there were procedural errors and an affidavit has been filed by Mr Lange, a partner in the Crown Solicitor's office. But the declarations are opposed on the basis that they are now academic and inappropriate. The second defendant abides the decision of the Court.

Plaintiff's case

[11] Essentially Mr Allan pitched the plaintiff's argument on two levels: first, the adjournment without authorisation of the Court; secondly, the scheduling process.

[12] As to the adjournment, Mr Allan submitted: that in the absence of any Court order it was unlawful; it also contravened the fixture ordered by Judge Farish; the Court could not delegate to the Crown the power to adjourn; and the adjournment was in breach of the rules of natural justice and s 27(1) of the New Zealand Bill of Rights Act 1990 which required the Court to observe the principles of natural justice.

[13] Although Mr Allan recognised that the first defendant had "fallen on his sword", his concern was that the second defendant had not acknowledged responsibility. He noted that it might have been possible for the error to be nipped in the bud if the Registrar had questioned or at least alerted a Judge to the fact that the trial was being put off without any judicial authorisation.

[14] While Mr Allan did not suggest that these unfortunate events are likely to occur again, he said that the plaintiff is seeking vindication of his rights by way of the declaration relating to the adjournment. In his submission such a declaration is appropriate in all the circumstances. Reliance was placed on *Robinson v North Shore District Court* [1997] 1 NZLR 64.

[15] On the broader issue of rescheduling it is appropriate to begin with Mr Starling's affidavit which states:

> 23. Although the way the plaintiff's trial was scheduled is a specific example of the use of possible misuse of the trial scheduling arrangements between the Crown and the Christchurch District Court, I am also aware of more general concerns held about the current trial scheduling arrangements. These are:
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> i. Although the Crown are obliged to 'consult' with defence counsel as to dates, in practice there is significant variation as to the amount of consultation and the flexibility of suggestions as to date.
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> ii. There is also a lack of transparency in the whole trial scheduling process.
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> iii. Another concern held by defence counsel relates to the information given to the Crown as part of the trial scheduling process. As well as being told the number of Courts available, the Crown is told which Judges will be hearing which Courts. This can give rise to the suggestion that the Crown has the ability to 'Judge-shop' with cases.
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> iv. The scheduling process also gives the Crown the ability to effectively re-schedule by stacking the schedules and re-prioritising trials.

These allegations need to be read in conjunction with Mr Lange's affidavit in which he deposes that he has not received any complaints from the Bar about the process and as far as he knows no complaints have been received by Mr Stanaway.

[16] It also needs to be recorded at this point that the Canterbury Bar Association was notified of the proceeding. No application for leave to be heard was received from that Association.

[17] Mr Allan's criticism of the scheduling process can be summarised: the Crown has virtually exclusive control over the scheduling process; defence counsel only get information about the scheduling of their own trial, they do not receive information about other trials and under those circumstances they do not have a sufficiently wide picture to be able to contest priorities should the need arise; and after the committal the issue of rescheduling goes into the "black rescheduling box of the Crown".

[18] In this particular case Mr Allan also complained that once the problem was brought to the attention of the Court, the Court sent the Crown away to have another look at scheduling, rather than taking a hands on approach. He submitted that this should have been managed by the Court rather than the Crown. He also submitted that the system operated in Auckland, where scheduling is managed by a member of the Court staff, might be more appropriate.

First defendant's response

[19] While Mr Powell acknowledged that the plaintiff's reaction to the problem that arose might be understandable, he emphasised that it was necessary to keep the matter in perspective. The only rights available to the plaintiff were: first, a right to a fair trial; and, secondly, without undue delay. It is impossible, he submitted, for there to be a right to priority ahead of others.

[20] In this case the Crown Solicitor had recognised the error and had promptly taken steps to refer it to a Judge. The Judge then took the reins and it was properly handled from that point, with the result that it had "self corrected". He submitted that there is no practical need for a declaration and that this is not a case like *Robinson* where ongoing issues warranted a declaration. Nor, in Mr Powell's submission, was it akin to *Falwasser v Attorney-General* Rotorua High Court CIV

2008-463-000701, 19 March 2010 where fundamental rights guaranteed by the Crown had been breached.

[21] Crown counsel also cautioned against becoming involved in the scheduling issue. While the District Court and the Crown have to be astute to stop incidents like this happening again, a declaration will serve no useful purpose in achieving that objective. Moreover, any suggestion that there be a remodelling based on the Auckland system would involve funding issues and the suggestion that information about other trials should be disclosed would give rise to issues of confidentiality.

Discussion

[22] Obviously an adjournment without the involvement of the Court is unlawful. That was recognised by the Crown, hence the attendance of Mr Stanaway in person and his apology to the Court. It is true that the administration of the Court must carry some responsibility for what happened, but little can be achieved in attempting to allocate blame. Once Judge Crosbie became aware of the problem he set about fixing it along the only paths that were realistically available. He could not undo what had already been done and, as Mr Powell said, the matter ultimately self righted itself.

[23] Given that Mr Parkin pleaded and has been sentenced there can be no realistic suggestion that a declaration of the Court would affect him personally in any tangible way.

[24] This is not a case like *Robinson* where there were ongoing issues. That case involved an adjournment at large which contravened s 152 of the Summary Proceedings Act 1957. As Paterson J said, the adjournment that had already been granted could not be undone. But it was necessary for the Court to address the ongoing situation pending trial. Thus the Court made declarations which had the effect of requiring compliance with s 152 pending trial. The declarations were not academic.

[25] Nor is this case like *Falwasser*. Mr Falwasser had been beaten and pepper sprayed while in police custody which involved a breach of basic human rights and demanded a remedy. Steps taken by the police after the incident, including an apology and investigation, could not undo the physical harm that had been suffered by Mr Falwasser.. Not surprisingly declarations were made and public compensation was awarded.

[26] In this case neither the second declaration sought by the plaintiff (that the purported adjournment was invalid) or the third declaration (that the trial ought to have proceeded on 2 November) would serve any useful purpose. Events have overtaken the errors in the administration of justice and there has been no residual harm. The declarations would be entirely academic. I decline to make them.

[27] I also decline to make any declaration as to the rescheduling process (as sought by the first declaration). There is no suggestion that the unfortunate events on this occasion are likely to be repeated. Under the system that is operating the safety valve is provided by the ability of defence counsel to raise scheduling issues of concern to them with a Judge. It is not for the High Court to intervene by declaring that defence counsel should have information about everyone else's trials. That would only invite competition between defence counsel and prolonged argument which would be counter productive to the efficient dispatch of the District Court's business.

[28] In any event it is difficult to guage the extent of the unrest about the system that presently operates in Canterbury. Mr Lange said that no direct complaints have been received. The Canterbury Bar Association had not sought to become involved. It would be extremely unwise for a High Court Judge, effectively sitting in a vacuum, to over react to what was effectively a one-off glitch.

Outcome

[29] I decline to make the declarations sought and the applications are dismissed. Given that Mr Powell has indicated that if this is the outcome the first defendant would not be seeking costs, there will be no order as to costs.

Solicitors: G C Knight, Christchurch (Counsel: P N Allan)
Crown Law, Wellington (A M Powell)