

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

**CIV-2017-409-000609  
[2017] NZHC 2132**

BETWEEN CANTERBURY REGIONAL COUNCIL  
Applicant

AND SAM MAHON  
Respondent

Hearing: 1 September 2017 (On the papers)

Appearances: J V Ormsby for Applicant

Judgment: 1 September 2017

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**JUDGMENT OF DUNNINGHAM J**

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**The application**

[1] This afternoon the Court received a without notice interlocutory application for interim injunction from the Canterbury Regional Council (CRC). CRC seeks orders preventing the respondent, Mr Sam Mahon, or any other person, from erecting or otherwise locating or situating a sculpture of the Honourable Nick Smith, Minister for the Environment and Building and Housing, on the land outside CRC's offices at 200 Tuam Street, Christchurch.

[2] The statue in question is described as a "larger than life depiction of Dr Smith clothed from the waist up and exposed from the waist down with exposed genitalia and assuming a squatting position over a glass of water". Pictures of the sculpture in question were annexed to affidavit evidence.

[3] The application was accompanied by affidavit evidence from:

- (a) Jeremy Alastair Barr, from Land Information New Zealand, confirming that Land Information New Zealand is a government department responsible for administering the land outside 200 Tuam Street, Christchurch (the land) and that CRC is the purchaser of the land and the land will be vested in CRC;
- (b) Elizabeth Hera Cunningham, a councillor and sitting member of Te Rūnanga o Ngāi Tahu, who describes the significance of the land to Te Rūnanga o Ngāi Tahu and the offence it would cause to have a sculpture which has exposed genitalia and which depicts Dr Smith “doing a tutae” (defecating), in close proximity to the kōhatu mauri (boulders which have been blessed and which now have a life force recognised by Ngāi Tahu ), and on land that has been blessed by Ngāi Tahu;
- (c) Miles Damian McConway, who explains CRC’s interest in the land, the reasons CRC understand Mr Mahon plans to erect the sculpture on the land and his belief that the sculpture may:
  - (i) cause offence to the Scoular family (because the land is named after Peter Gray Scoular, a former Christchurch City Council Deputy General Manager), Ngāi Tahu, CRC and members of the public; and
  - (ii) is likely in breach of s 94(1)(k) Reserves Act 1977.

[4] The accompanying memorandum of counsel, relying on this evidence, explains why the erection or placement of this sculpture could contravene:

- (a) the Reserves Act 1977;
- (b) section 124(1)(b) Crimes Act 1961; and

(c) the Electoral Act 1993.

[5] Mr Ormsby explains that CRC only found out about Mr Mahon's intentions on the morning of 31 August 2017. CRC understands from material found on the internet that Mr Mahon intends to erect or place this sculpture on the land on Monday, 4 September 2017. It is for that reason, CRC seeks the injunction on an urgent basis and without notice to the respondent.

[6] Counsel's memorandum in support of the injunction argues that:

- (a) there are serious questions to be tried arising under the Reserves Act 1977, the Crimes Act 1961 and the Electoral Act 1993;
- (b) the balance of convenience favours granting the injunction;
- (c) granting the injunction preserves the status quo;
- (d) if the injunction is not granted, CRC cannot be adequately compensated by damages; and
- (e) if the injunction is granted, Mr Mahon is unlikely to suffer any loss, but if any loss can be shown, CRC has given an undertaking as to damages.

[7] CRC also proposes that, if the parties cannot resolve matters between them, then CRC accepts it must bring proceedings within 20 working days.

### **Discussion**

[8] The relevant principles are well known.<sup>1</sup> To succeed, the applicant must satisfy me that:

- (a) there is a serious question to be tried;

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<sup>1</sup> *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL).

- (b) the balance of convenience favours the granting of the injunction; and
- (c) in all the circumstances, it is just and equitable that the injunction be granted, in this case, on an interim basis.

[9] I accept, as is outlined in counsel's memorandum, that there is a serious question to be tried that the erection of the statue would be in breach of s 94(1)(k) Reserves Act 1977, s 124(1)(b) Crimes Act 1961, and may also be an electoral advertisement under s 3A of the Electoral Act 1993, thus engaging the provisions of that Act as to an electoral advertisement, and which do not appear to have been met.

[10] In terms of the balance of convenience, Mr Mahon no doubt will see this as an issue of free speech. However, that is not what is in issue in the interim injunction application. Instead, it is whether it is appropriate to permit Mr Mahon to place the statue in this particular location, given its legal status as a reserve, its ownership by LINZ and beneficial ownership by CRC, and its cultural connections to Te Rūnanga o Ngāi Tahu.

[11] In my view, the balance of convenience readily favours the applicant, as it goes no further than preventing Mr Mahon from erecting the statue in this particular location and not from displaying it in some other location. I accept, that if the injunction is granted, Mr Mahon is therefore unlikely to suffer any loss, but if it is not granted, CRC can not be adequately compensated by damages.

[12] For the same reasons, I consider that, looked at in the round, it is just and equitable that the injunction be granted on an interim basis.

### **Outcome**

[13] Accordingly, I make the following orders as sought by the applicant:

- (a) I grant an interim injunction preventing Sam Mahon erecting or otherwise locating or situating a sculpture of the Hon Nick Smith, Minister for the Environment and Building and Housing, on the land outside 200 Tuam Street, Christchurch comprising Lot 1, DP 46492,

CB25B/950, Canterbury Land Registry (Land) or on any other land owned, controlled, or administered by the CRC.

- (b) I grant an interim injunction preventing any other person from erecting or otherwise locating or situating a sculpture of the Hon Nick Smith, Minister for the Environment and Building and Housing, on the Land or on any other land owned, controlled, or administered by the CRC.
  
- (c) I direct that notice of these orders may be given to:
  - (i) Mr Mahon by email, facsimile, or other electronic means (including via facebook) in the first instance; and
  - (ii) Mr Mahon and all others who may be affected by this order by public notice in the Press as soon as is practicably possible.
  
- (d) Unless the Applicant and the Respondent otherwise resolve matters, the Applicant shall commence declaratory proceedings within 20 working days (unless the position can otherwise be agreed with Mr Mahon) seeking declarations concerning:
  - (i) whether the Reserves Act 1977 prohibits the unauthorised erection or placement of sculptures on reserve land;
  - (ii) whether the placement of Mr Mahon's sculpture would contravene s 124 of the Crimes Act 1961; and
  - (iii) whether the placement of Mr Mahon's sculpture on the Land would contravene the Electoral Act 1993.

[14] Although costs are sought, given the early stage of the proceedings and that the orders have been made on a without notice basis, I reserve the issue of costs.

Solicitors:  
Wynn Williams, Christchurch