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

**CIV 2016-483-30**
**[2017] NZHC 1441**

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| BETWEEN | STEPHEN THOMAS HUDSON<br>Applicant |
| AND | THE ATTORNEY-GENERAL<br>Respondent |

Hearing: 1 March 2017

Counsel: Applicant in Person
S K Barr for Respondent

Judgment: 27 June 2017

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**JUDGMENT OF ELLIS J**

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[1] In 2009 Mr Hudson was convicted of murdering Nicholas Pike. He was subsequently sentenced to life imprisonment with a 16 year minimum term. Mr Hudson maintains his innocence, but has now exhausted all avenues of appeal. So he wishes instead to enlist the help of an investigative journalist, Mr Mike Kalaugher, to look into his case. His thinking is that if sufficient relevant new evidence or information is uncovered he might be able to petition the Governor-General and obtain a referral back to the Court of Appeal.

[2] Mr Hudson says that in order to brief Mr Kalaugher fully, he needs to review the legal papers relating to his trial. But when he requested access to those papers the Department of Corrections (Corrections) advised that the Rule 5.4.a of the Authorised Property Rules (the Rules) do not allow prisoners to have access to such papers unless they have "current legal proceedings". Mr Hudson says that Rule 5.4.a contravenes his right to freedom of expression under s 14 of the New Zealand Bill of Rights Act 1990 (NZBORA).

[3] Mr Barr for the Attorney-General says that the issue raised is now moot because, after these proceedings were filed, Corrections gave Mr Hudson his legal papers. The justification for doing so is that it is now considered that Mr Hudson falls within Rule 5.4.a because has asserted an intention to appeal, albeit in a highly contingent way. The Crown says that if this position were to change in future then Mr Hudson should explore existing internal complaint mechanisms to request that Corrections amend its rules or that the Chief Executive instruct that he be issued with his legal papers. More broadly, Mr Barr submits that the Rule places lawful limits on the property that prisoners may have in their cells for sound policy reasons.

[4] I record at the outset that I am not inclined to proceed on the basis that the issue raised is moot. That is, in part, because it would appear to have ongoing ramifications, both for Mr Hudson and for other prisoners.

[5] I also record at the outset that the interpretation of the Rule more recently adopted by Corrections in order to accommodate Mr Hudson is, in my view, untenable. The proposition that the r 5.4.a reference to "current legal proceedings" includes proceedings not yet in train, and which may never be in train, strains the meaning of those clear words. On any analysis, Mr Hudson's intention to discuss the possibility of an investigation and a book with a journalist, with a view to *possibly* seeking exercise of the royal prerogative in favour of a retrial at some point in the future is not a "current proceeding".

**Background**

[6] In 2016, Mr Hudson was an inmate at Whanganui Prison.

[7] On 14 July 2016, Mr Hudson submitted a written request to the Principal Corrections Officer of his Unit, Mr Gray, using a standard form (called a "Prisoner Complaint Form" or "PC.01"). Mr Hudson stated in the form: "I need access to my Murder trial documents stored in the property office". Mr Gray has deposed that he interviewed Mr Hudson about the request but Mr Hudson would not tell him anything.

[8] After seeking advice from the prison property officer, Mr Gray provided Mr Hudson with a response in writing on 26 July. He advised that according to the Rules made under s 45A of the Corrections Act 2004 Mr Hudson was only entitled to his court paperwork if:

> … he has a current case going. Legal papers are to be removed from site when the case has concluded, however, in this case it appears that his documents are still stored in his property.

[9] It is now accepted that the specific references to the relevant statutory provisions contained in the advice (which I have not replicated) were mistaken.

[10] Mr Gray's response also indicated that Mr Hudson would be asked to give reasons for his request. This subsequently occurred. Both Mr Hudson and Mr Gray have given an account of the relevant conversation in their respective affidavits.

[11] In Mr Hudson's first affidavit he said that he told Mr Gray that he wanted to continue looking into possible avenues of appeal, to gather new evidence, to write about each witness's brief of evidence and evidence that wasn't used and to send that information to Mr Kalaugher. In Mr Hudson's second affidavit, he explained that he was seeking the help of Mr Kalaugher in "an attempt to seek justice in the matter of my conviction for murder."[1]

[12] Mr Gray's account is that Mr Hudson told him that he needed the documents for a possible appeal and a book. Mr Gray noted these reasons in handwriting on the official form. Mr Gray was of the view that the prospect of a further criminal appeal was remote. In any event, Mr Gray believed that Mr Hudson understood that his request had been declined and considered the matter resolved. Mr Hudson did not raise the matter again with Mr Gray or pursue any internal review procedures.

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[1] Mr Kalaugher has sworn an affidavit confirming that he is willing to conduct research into Mr Hudson's conviction and suggests that if sufficient relevant new evidence is found then it could be provided to a lawyer for consideration of a petition for the exercise of the Royal prerogative.

[13] Instead, on 19 August 2016, Mr Hudson filed the present proceedings challenging this decision. In part, the application for review was based on the incorrect statutory references in Mr Gray's 26 July advice.

[14] On 15 September, Mr Hudson's Residential Manager, Graham Dack, spoke to Mr Hudson about the proceedings. Mr Dack says that he explained to Mr Hudson that the statutory references contained in the earlier refusal were mistakes. After further discussion, Mr Dack accepted that Mr Hudson's intention was to lodge an appeal, and that it was reasonable for Mr Hudson to wish to see his old paperwork to prepare. Various access options were explored, including viewing the papers in the receiving office and then in the manager's office, but neither proved to be practical. In the end, the legal papers were provided to Mr Hudson to store in his cell.

[15] As I have said, despite now having access to the documents he requires, Mr Hudson still wishes to pursue his challenge to the legality of r 5.4.a. Before turning to consider the legal issues raised, however, it is necessary to say something about the wider statutory framework in which the rule exists, and the rules themselves.

**The legislative context**

*The Corrections Act 2004*

[16] Section 5(1) of the Corrections Act 2004 (the Act) relevantly states that the purpose of the corrections system is, inter alia:

> … to improve public safety and contribute to the maintenance of a just society by—
>
> (a) ensuring that … custodial sentences and related orders that are imposed by the courts … are administered in a safe, secure, humane, and effective manner; and
>
> (b) providing for corrections facilities to be operated in accordance with rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners[.]

[17] Notably, rule 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules) provides that:[2]

> Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.[3]

[18] Section 6 of the Act sets out the principles that are to guide the operation of the corrections system and which must, where applicable and so far as practicable in the circumstances, be taken into account by those who exercise powers and duties under the Act or any regulations made under it. The section makes it clear that the maintenance of public safety is the paramount consideration when making decisions about the management of prisoners. As the Court of Appeal said in *Taylor v Chief Executive of the Department of Corrections*:[4]

> … While a prisoner is not wholly deprived of the rights available to other citizens, the particular need in prisons to maintain order and discipline has been recognised in a number of decisions.

[19] Equally, however, s 6(g) requires that:

> sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision:

[20] Prisoners' property is dealt with specifically in sections 43–45A of the Act. Section 43 provides:

> **43 Authorised property**[5]
>
> (1) A prisoner may be issued with, or allowed to keep, authorised property subject to—
>
> (a) any condition set out in rules made under section 45A; and

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2 United Nations Standard Minimum Rules for the Treatment of Prisoners A/RES/70/175, adopted by the General Assembly on 17 December 2015.

3 It seems to me that Rule 53 gives voice to two policies: the importance of prisoners having access to such documents per se and also freedom from having those documents searched or seized by the prison authorities. I note that the term "legal proceedings" is not defined in the Mandela Rules.

4 *Taylor v Chief Executive of the Department of Corrections* [2010] NZCA 371, [2011] 1 NZLR 112 at [28].

5 The term "authorised property" is defined in s 3 as "… property declared by rules made under s 45A as property that prisoners may be issued with or allowed to keep".

(b) any special conditions imposed by the prison manager relating to the use of the property; and

(c) the condition described in section 44(1).[6]

(2) Despite subsection (1), the prison manager may refuse to issue or allow a prisoner to keep an item of property if he or she has reasonable grounds to believe that—

(a) the item may be used to injure the prisoner or any other person, or to damage property; or

(b) the item is a camera, tape recorder, or electronic device that may be used to record security features or actions in the prison; or

(c) the item may be used to circumvent practices or procedures in the prison; or

(d) the item has been obtained through coercion of a prisoner or as a result of other improper behaviour; or

(e) the item is objectionable; or

(f) the item may assist a prisoner to—

(i) discover new methods of committing offences; or

(ii) continue offending; or

(g) the item may interfere with the effective management of the prison.

(3) Despite subsection (1), the prison manager may refuse to issue or allow a prisoner to keep any item of authorised property—

(a) if the prisoner is—

(i) subject to a penalty of forfeiture of privileges imposed under subpart 5 of Part 2; or

(ii) the subject of a direction under section 60 for the reason described in section 60(l)(b) (which relates to assessing or ensuring the prisoner's mental health); or

(iii) subject to cell confinement imposed as a penalty under subpart 5 of Part 2; or

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[6] Section 44(1) provides that, before the item is issued to the prisoner, the prisoner must acknowledge in writing that (a) the prisoner accepts full responsibility for the property; and (b) the corrections authorities are not liable for any loss of, or damage to, the property; and (c) the property may not be transferred to another prisoner without the prior approval of the prison manager; and (d) the prisoner will comply with any special conditions imposed under section 43(1)(b).

(b) if the prisoner is detained in a police jail and, in the opinion of the manager, having regard to the facilities available at the police jail and the resources available, it is not practicable to allow the prisoner to keep the item; or

(c) in any other circumstances specified in regulations made under this Act or rules made under section 45A.

[21] In terms of any relevant regulations of the kind referred to in s 43(3)(c), reg 33(1) of the Corrections Regulations 2005 provides:

(1) A manager of a prison may refuse, under section 43(3)(c) of the Act, to issue or allow a prisoner to keep any item of authorised property in the following circumstances:

(a) following an emergency in the prison (for example, a riot or serious incident):

(b) if, in the opinion of the manager, the security of the prison is threatened:

(ba) if, in the opinion of the manager, the presence of the item in a shared cell threatens the safety or welfare of any prisoner in that cell:

(c) if the prisoner is detained in a temporary corrections prison (within the meaning of section 32(4) of the Act).

[22] And as far as relevant rules are concerned, s 45A(1)(a) and (b) delegate to the Chief Executive:

(a) the obligation to "make rules declaring the items of property that prisoners may be issued with or allowed to keep"; and

(b) the power to "make rules imposing conditions that attach to an item of property so declared".

*The Authorised Property Rules*

[23] The current iteration of the Authorised Property Rules promulgated under s 45A is dated March 2016. As I note at [26] below, the 2016 wording of the Rule in question is different from the earlier version.

[24] The Rules begin with the "General conditions and explanatory notes related to the issue and use of authorised property", which include the following statements:

> 1. … Only property specified in the schedules contained herein is authorised property that prisoners may be issued with or be allowed to keep in accordance with section 43 of the Act. Prisoners may not be issued with or allowed to keep any other property items.
>
> …
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> 3. The fact that an item of property is authorised property does not mean a prisoner has the right to be issued with or allowed to keep, use or wear that property at any time. The issue and use of all property is conditional.
>
> 4. A prison director will not issue or allow a prisoner to keep an item of property even if it qualifies as authorised property if:
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> a. the prison director considers the item is likely to interfere with the security and good order of the prison (e.g. gang related paraphernalia and any items with gang related colours, symbols or imagery);
>
> b. the prison director considers the item is likely to negatively affect the prisoner's successful rehabilitation and reintegration; or
>
> c. the item breaches any Act of Parliament or Regulations, Department of Corrections Policy, or restrictions imposed by other government organisations such as the Office of Film and Literature Classification.
>
> 5. Note that even where an item of property qualifies as authorised property a prison director is still entitled, under circumstances outlined in the Act and the Regulations, to refuse to issue it or allow a prisoner to keep it. Additional conditions may apply to the issue of clothing and correspondence.

[25] The Rules then comprise a series of schedules, each of which deals with different categories of property, including health items, religious items, literature and music, prison owned property (such as bedding and televisions), electrical items, clothing, toiletries, stationery, correspondence and hobby materials. Legal papers are dealt with under the heading "correspondence" in schedule 5.4, which relevantly provides as follows:

5.4 Correspondence

| Property Item | Description | Limit | Specified conditions |
|---|---|---|---|
| a. Legal papers | | | Limited to prisoner's own current legal proceedings. Legal papers are to be removed from site when the case has concluded. Evidence of legal proceedings must be provided on request. |

[26] In the earlier version of the Rules, however, "legal papers" were included under the heading "other prisoner property" and there were no specified conditions attached to their possession.

**Discussion**

[27] Mr Hudson's claim raises two key issues, namely:

(a) whether r 5.4.a contravene s 14 of the NZBORA; and

(b) if it does, whether that contravention renders the rule unlawful.

*Does the rule contravene s 14?*

[28] Section 14 states:

> **14 Freedom of expression**
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> Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

[29] While acknowledging that the Courts have held that freedom of expression is important in a prison context, Mr Barr submitted that it was doubtful that the s 14 right was engaged here. More particularly, he said that the Rule does not purport to regulate prisoners' seeking, receiving or imparting of information and opinions. Rather, he said:

(a) the information or opinion contained in a prisoner's legal papers is, by definition, already the prisoner's property. Prisoners seeking to have their legal papers issued to them are not, therefore, seeking to receive information from the state as the information is already theirs; and

(b) subject to any other law or court order that prohibits their dissemination, the Rule does not prevent prisoners from providing the legal papers to any third person outside the prison, and thereby "imparting" the information contained in them. For example, he said, it would be expected that a prisoner's legal papers will often be held by their counsel.

[30] Accordingly, Mr Barr's submission was that the Rule only indirectly affects a prisoner's s 14 rights, by limiting the circumstances in which prisoners can keep the legal materials in their cell and thereby constraining their ability to review that information in advance of any intended communication with third parties. He said that this indirectness of effect meant that there was no breach of s 14 NZBORA.

[31] I am unable to agree, for the reasons which follow.

[32] The starting point is that the right to freedom of expression is engaged in a fundamental or high value way in circumstances where the expression at issue involves the proposed ventilation of concerns by or on behalf of a prisoner about an alleged miscarriage of justice. As Lord Steyn said in *R v Secretary of State for the Home Department, Ex parte Simms*:[7]

> The value of free speech in a particular case must be measured in specifics. Not all types of speech have an equal value. For example, no prisoner would ever be permitted to have interviews with a journalist to publish pornographic material or to give vent to so-called hate speech. Given the purpose of a sentence of imprisonment, a prisoner can also not claim to join in a debate on the economy or on political issues by way of interviews with journalists. In these respects the prisoner's right to free speech is outweighed by deprivation of liberty by the sentence of a court, and the need for

[7] *R v Secretary of State for the Home Department, Ex parte Simms* [1999] UKHL 33; [2000] 2 AC 115. *Simms* involved a blanket ban on oral interviews by journalists of prisoners claiming to have been the victims of a miscarriage of justice. The prison authorities did not allow such interviews to take place unless the journalist concerned signed an undertaking not to use the information gained for professional purposes.

> discipline and control in prisons. But the free speech at stake in the present cases is qualitatively of a very different order. The prisoners are in prison because they are presumed to have been properly convicted. They wish to challenge the safety of their convictions. In principle it is not easy to conceive of a more important function which free speech might fulfil.

[33] These dicta from *Simms* were cited with approval by this Court in *Watson v the Chief Executive of the Department of Corrections*.[8] There, it was held that a decision by Corrections declining a request from a journalist to interview the prisoner Scott Watson face-to-face was unreasonable because the restriction on the proposed mode of communication was unconnected to Corrections' stated goal of protecting the victims of Mr Watson's offending. The restriction on the s 14 right was not, therefore, justified. Dunningham J said:

> [49] … the courts have regularly recognised that the right to express concerns about an alleged miscarriage of justice is a legitimate exception to those restrictions [on freedom of expression] and there is both an individual, and a public, interest in facilitating a prisoner's ability to ventilate these issues where that can be done in a responsible and considered way.

[34] And further:[9]

> A refusal to allow the prisoner to be interviewed by a responsible journalist investigating a complaint that he had been wrongly convicted would strike at the heart of the administration of justice itself.

[35] I accept that both *Simms* and *Watson* are somewhat different from the present case, which does not directly concern restrictions on a prisoner's ability to communicate with a journalist (or the mode of that communication). But it seems to me that denying a prisoner access to information relating to his or her legal papers in circumstances where the prisoner believes that the proceedings to which they relate were, or gave rise to, a miscarriage, involves an even more fundamental restriction. As both *Simms* and *Watson* demonstrate, a prisoner's very real interest in such information does not logically cease simply when appeal rights are exhausted. Section 14 is not just about imparting information. It expressly encompasses the right to seek and to receive it. And here, there is no dispute that Mr Hudson would be entitled to access his legal papers and to have the information in his possession were he not incarcerated. While Mr Barr may be correct to say that the relevant

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8 *Watson v the Chief Executive of the Department of Corrections* [2015] NZHC 1227, (2015) 10 HRNZ 505.

9 At [50], quoting *Simms*, above n 7, at 145.

information "belongs" to Mr Hudson, ownership is meaningless unless he is able (in fact) to access it.

[36] The fact that Mr Hudson also wishes to impart the information to a journalist arguably makes his case stronger, because it gives rise to the additional and wider freedom of expression issues related to the desirability of ventilating alleged miscarriages of justice in public.[10] But in my view s 14 is engaged regardless of whether he wishes immediately to pass the information on. In my view the right is also at issue where Mr Hudson himself simply wishes to access the information for the purposes of his own private inquiries and research into the fairness of his trial or the merits or otherwise of his conviction.[11] Accordingly, I consider that the blanket prohibition on prisoners such as Mr Hudson accessing their legal papers is contrary to s 14.

*Does the breach of s 14 render r 5.4.a unlawful?*

[37] Section 45A(3) provides that:

> Rules made under subsection (1) or (2) are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989 but not for the purposes of the Acts and Regulations Publication Act 1989.[12]

[38] And because regulations are an "enactment" in terms of s 4 of the NZBORA, the Rules cannot be directly invalidated simply because they are inconsistent with NZBORA.[13]

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10 It is unclear to me whether there would be any impediment to Mr Hudson simply authorising a Mr Kalaugher to have access to his file, although I note that the Court has declined a direct access request from Mr Kalaugher, citing the need to protect the confidentiality and privacy interests of witnesses.

11 For example if Mr Hudson wished to review the files himself before making a decision about whether or not to engage with the media.

12 The Regulations (Disallowance) Act and the Acts and Regulations Publication Act were repealed by the Legislation Act 2012. It must be assumed that the failure of that Act consequentially to amend the Corrections Act (as it did many other Acts) was an oversight. I therefore proceed on the basis that the Rules continue to be deemed to be regulations.

13 This is because section 4 of NZBORA provides that an enactment cannot be held invalid for inconsistency with NZBORA and "Enactment" is defined in the Interpretation Act 1999 as "an Act or regulations". "Regulations" are defined in the Interpretation Act as including "an instrument that is a legislative instrument or a disallowable instrument for the purposes of the Legislation Act 2012".

[39] But there is another potential route to invalidity. Regulations have been held to be ultra vires their empowering provision, on the basis that the empowering provision must, itself, be read consistently with NZBORA. In *Drew v Attorney-General*, the Court of Appeal said:[14]

> [68] It is therefore not really necessary to respond to Mr Butler's argument that the regulations in question are protected by s 4 of the Bill of Rights. However, we are satisfied that this argument is so plainly erroneous that it is desirable that we despatch it in the present case rather than leave any lingering doubt that it might have had validity. Counsel was correct, of course, when he said that a regulation is an "enactment." Section 29 of the Interpretation Act 1999 confirms that position. But the answer to counsel's argument is that, in striking down the regulations because they are *ultra vires* the empowering section (s 45), the Court is not doing so only because they are inconsistent with the Bill of Rights. To the extent that it is necessary to refer to the Bill of Rights, the regulation is invalid because the empowering provision, read, just like any other section, in accordance with s6 of the Bill of Rights, does not authorise the regulation. The Court merely gives s 45 a meaning that is consistent with the rights and freedoms contained in the Bill of Rights. In accordance with s 6, that meaning is to be preferred to any other meaning. As Mr Wilding said, s 4 is not reached.

[40] The starting point is therefore that s 45A must, if possible, be read consistently with (and as empowering only rules that are consistent with) the right to freedom of expression confirmed by s 14. Thus it will only authorise a rule which breaches s 14 in the way that r 5.4.a does, if there is something explicit or implicit in s 45A itself or in its surrounding statutory context that compels the conclusion that Parliament intended and authorised a breach of the right in that way.

[41] Section 45A is concerned with authorising the making of rules which both define authorised property and also impose conditions on the issuing of such property to prisoners. The Rules confirm that a prisoner's legal papers constitute "authorised property".

[42] The statutory context makes it clear, however, that the right of a prisoner to have access to any item of authorised property is not, and cannot be, absolute. That is clear from s 43 and, in more general terms, from ss 5 and 6 of the Corrections Act. But the question is whether those, or some other, provisions authorise what has been

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[14] *Drew v Attorney-General* [2002] 1 NZLR 58 (CA). Approved in *Cropp v Judicial Committee* [2008] NZSC 46, [2008] 3 NZLR 774 at [25].

promulgated here, namely a blanket prohibition on access to legal papers once a prisoner has no pending legal proceedings.

[43] Broadly speaking, the submission for Corrections was that the r 5.4.a blanket prohibition on a prisoner being allowed to keep legal papers in his or her cell except when they relate to "current proceedings" was authorised because of concerns of the kind underlying ss 5, 6 and 43. Thus, it was said:

(a) if an inmate has legal documents in his or her cell, other prisoners may gain access to confidential information contained in them which may (depending on the nature of the information) put the prisoner's safety at risk;

(b) large volumes of paper can pose a fire risk;

(c) papers can be used to conceal contraband;

(d) too much property in a cell can make it difficult for the prisoner to be moved, and presents difficulties to staff moving through cells and conducting searches; and

(e) preoccupation with court cases can be detrimental to a prisoner's participation or desire to participate in rehabilitation and reintegration programmes.

[44] But there are three difficulties with these submissions:

(a) they do not answer the fundamental question of whether there is statutory authority for a rule containing a blanket prohibition;

(b) most or all of them would apply equally when legal proceedings *are* in train (when the restriction in the rule would not apply); and

(c) the power to deal with such concerns, by restricting access on a case by case basis, exists already exists, in the form of s 43 itself and also in reg 33.

[45] As far as the last of these points is concerned, the effective use of s 43 to address such concerns can be seen in *Greer v Prison Manager at Rimutaka Prison*.[15] In that case, Mr Greer had challenged the prison manager's decision to limit the quantity of legal papers that he was entitled to have in his cell (three of his total of approximately eight or nine boxes). This Court held:

> [17] Section 43(1)(b) Corrections Act 2004 entitles a prison manager to impose conditions relating to the issue of any item of property given to a prisoner. The decision to restrict Mr Greer's access to only three cartons was perfectly rational. It related to the capacity to undertake effective cell searches and health and safety issues relating to an increased fire risk proportionate to the quantity of flammable material in the cell. Section 43(2)(g) also entitles the prison manager to refuse to allow a prisoner to keep an item which may interfere with the effective management of the prison. The Manager's decision was lawful.

[46] And similarly in the present case, it is clear that once Corrections formed the view that the rule did not operate to prohibit Mr Hudson from having access to his legal papers, appropriate steps were taken to mitigate any specific risks which were of concern. The evidence was that he was housed in a single cell which was locked in his absence, there were fire sprinklers in each cell, and there were daily checks to ensure that Mr Hudson's cell did not become too cluttered.[16]

[47] In my view, therefore, neither a literal nor a purposive interpretation of s 45A authorises a blanket restriction (namely one which applies regardless of the actual existence of any of the concerns underlying s 43 or other provisions in the Act) on a high value manifestation of the s 14 right.[17] Put another way, the rule is necessarily ultra vires because it potentially denies prisoners' high value s 14 rights in a way that is not authorised by proper (NZBORA consistent) interpretation of s 45A.

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15 *Greer v Prison Manager at Rimutaka Prison* HC Wellington CIV-2008-485-1603, 18 December 2008.

16 And there was ever evidence which suggests that prison officers are trained to apply the Rules in a way that is fair and reasonable and to apply common sense and experience and are well able to, and do, deal with issues arising under the rules on a case-by-case basis.

17 Indeed, it is arguable that the reference in s 5 to the provisions in the Act being based on the Mandela Rules points away from there being any limit on a prisoner's right of access to his or her legal papers.

**Conclusion**

[48] That part of r 5.4.a which precludes prisoners who have no "live" proceedings before the Court from accessing their legal papers is ultra vires the Corrections Act and therefore unlawful. Rather than quashing the rule outright, however, I direct the Chief Executive to amend the rule in accordance with this judgment. The 2013 version of the rule in unobjectionable and could simply be replicated.

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Rebecca Ellis J