

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV-2022-404-155

UNDER the Judicial Review Procedure Act 2016
IN THE MATTER of an application for judicial review
BETWEEN NEW ZEALAND DEFENCE FORCE
Applicant
AND DISTRICT COURT OF NEW ZEALAND
First Respondent
WORKSAFE NEW ZEALAND
Second Respondent

Hearing: 2 March 2023

Counsel: M A R Mercer and Colonel Kennedy-Good for Applicant
B M Finn for Second Respondent (and on instructions from
First Respondent)

Minute 2 March 2023

MINUTE OF BREWER J

Solicitors:
Simpson Grierson (Wellington) for Applicant
Crown Law (Wellington) for First Respondent
WorkSafe New Zealand (Auckland) for Second Respondent

[1] In my judgment delivered on 20 December 2022,¹ I overturned the decision of the District Court which permitted WorkSafe's prosecution of the New Zealand Defence Force to proceed in relation to the death of LCpl Nicholas Kahotea.

[2] My task this morning is to discharge the New Zealand Defence Force on the charge brought against it by WorkSafe under the Health and Safety at Work Act 2015. The law requires that to be done in open court.

[3] First, though, I want to acknowledge LCpl Kahotea's whanau. Your kinsman was an elite soldier. He died training to fight very dangerous people who could pose a deadly threat to us all at any time. We should all be grateful for his service. I certainly am.

[4] What my judgment says is that a declaration issued by the Chief of Defence Force exempting certain types of training from the Health and Safety at Work Act applied to the training LCpl Kahotea was doing when he died. My judgment says nothing about the causes of LCpl Kahotea's death because that was outside its scope. I assume that a Court of Inquiry has examined the causes.

[5] Formally then, I now discharge the New Zealand Defence Force, pursuant to s 147 of the Criminal Procedure Act, on the charge brought against it by WorkSafe.

A handwritten signature in blue ink, appearing to read 'Brewer J.', is written above a horizontal line.

Brewer J

¹ *New Zealand Defence Force v WorkSafe New Zealand* [2022] NZHC 3559.