

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

**CRI 2012-085-9093
[2013] NZHC 3223**

THE QUEEN

v

JOHN ARCHIBALD BANKS

Hearing: (on the papers)
Counsel: P E Dacre QC for Crown
D P H Jones QC for Mr Banks
Judgment: 3 December 2013

JUDGMENT OF HEATH J

This judgment was delivered by me on 3 December 2013 at 4.30pm pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors:
Crown Law, Wellington
Parlane Law, Auckland
Counsel:
P E Dacre QC, Auckland
D P H Jones QC, Auckland

[1] Contemporaneously, I have delivered a judgment dismissing Mr Banks' application for judicial review of a decision of the District Court to commit him for trial on a charge brought under s 134(1) of the Local Electoral Act 2001.¹

[2] Counsel agreed, in advance of the judicial review hearing, that if I were to dismiss that application, the criminal proceeding could be transferred by consent to this Court for hearing. The jurisdiction for such an order springs from s 28J of the District Courts Act 1947.

[3] In the circumstances, I agree that this prosecution should be tried in this Court. My reasons are:

- (a) The Crown alleges that Mr Banks, a sitting Member of Parliament, knowingly transmitted a false return of electoral expenses and donations to the electoral officer following an unsuccessful campaign for the Auckland Mayoralty in 2010.
- (b) If Mr Banks were convicted, the Epsom electoral seat, which Mr Banks currently holds, will be declared vacant and he will no longer hold office as a Member of Parliament.
- (c) Mr Banks is also the leader of the ACT political party. That party has a confidence and supply agreement with the current government.
- (d) A general election is scheduled for next year and the outcome of this trial could conceivably have an impact on the result of the general election.
- (e) It is in the public interest that the senior trial Court conduct the trial.

[4] By consent, I make an order transferring the proceeding to this Court. Mr Banks is remanded at large to appear at callover at 9am on 11 December 2013. I anticipate a plea will be entered at that time to the count contained in the current

¹ *Banks v District Court at Auckland* [2013] NZHC 3221.

indictment that has been filed in the District Court. Also, an election will need to be made as to trial before a jury or Judge sitting alone.

[5] For the same reasons given for transferring the proceeding to this Court, I recommend to the Criminal List Judge that this proceeding be given priority. It is undesirable that a trial, the result of which could have a material impact on a general election, be delayed until a time proximate to polling day. I understand that, depending upon whether Mr Banks elects trial by jury or Judge-alone, a hearing date might be available in the first quarter of next year.

[6] In anticipation of callover, counsel for the Crown may wish to reconsider whether charges involving three separate donations should be incorporated into a single count. Difficulties of the type discussed by the Supreme Court in *Mason v R*² may potentially arise. That is something for counsel to consider rather than for the Court, at this stage, to direct.

P R Heath J

Delivered at 4.30pm on 3 December 2013

² *Mason v R* [2011] 1 NZLR 296 (SC) at para [9].