

IN THE SUPREME COURT OF NEW ZEALAND

SC 88/2012
[2013] NZSC 21

BETWEEN DANIEL BRIAN THOMAS BARRIE
Applicant
AND THE POLICE
Respondent

Court: Elias CJ, McGrath and Chambers JJ

Counsel: V T Winiata for Applicant
M E Ball for Respondent

Judgment: 15 March 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Daniel Barrie was convicted of failing to permit a blood specimen to be taken contrary to s 16 of the Land Transport Act 1998. He asserts he should not have been convicted because he was denied his “right to consult and instruct a lawyer” under s 23(1)(b) of the New Zealand Bill of Rights Act 1990. He asserts that the section conferred on him a right to consult a foreign lawyer if that was his choice. This argument has been unsuccessful in three lower courts.¹

[2] While the issue of the meaning of “lawyer” in s 23(1)(b) might be a matter of general or public importance in some circumstances, it is not such a matter in this case for two reasons. First, the police, in addition to informing Mr Barrie that they

¹ *Police v Barrie* DC Tauranga CRI-2010-070-5243, 14 January 2011; *Barrie v Police* HC Tauranga CRI-2011-470-6, 6 October 2011; *Barrie v R* [2012] NZCA 485, [2013] 1 NZLR 55.

held a list of lawyers he could contact without charge, offered to let him contact his lawyer in Sydney. It was not the police's fault that he could not remember his lawyer's name. So the appeal is bound to fail on the facts.

[3] Secondly, Judge Ingram carefully considered, should he be wrong in his ruling that Mr Barrie's rights had not been infringed, whether the evidence of Mr Barrie's refusal to permit a blood specimen to be taken should be excluded under s 30 of the Evidence Act 2006. He concluded the evidence should not be excluded, a conclusion apparently not challenged in the High Court and certainly not challenged in the Court of Appeal. In the absence of a challenge to Judge Ingram's s 30 evaluation, the proposed appeal must fail.²

Solicitors:
Jackson Reeves, Tauranga, for Applicant
Crown Law Office, Wellington, for Respondent

² *Gallichan v Police* [2009] NZCA 79; *Birchler v Police* [2010] NZSC 109, [2011] 1 NZLR 169 at [19] and [21].