

IN THE SUPREME COURT OF NEW ZEALAND

SC 129/2014  
[2014] NZSC 180

BETWEEN ISSAC JOHN CHADDERTON  
Applicant

AND THE QUEEN  
Respondent

Counsel: A G Speed and D H P Schellenberg for Applicant  
P D Marshall for Respondent

Judgment: 8 December 2014

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JUDGMENT OF WILLIAM YOUNG J

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**The application for deferral of the operation of the disqualification order  
is dismissed.**

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**REASONS**

[1] The applicant was found guilty of driving with an excess proportion of alcohol in his breath.<sup>1</sup> An appeal to the High Court was dismissed by Keane J<sup>2</sup> as was a further appeal to the Court of Appeal<sup>3</sup> (pursuant to leave granted by Keane J).<sup>4</sup> That judge also directed that the operation of the disqualification period be suspended pending determination of the appeal by the Court of Appeal. This is

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<sup>1</sup> *Police v Chadderton* DC Auckland CRI-2011-044-1152, 3 April 2013.

<sup>2</sup> *Chadderton v New Zealand Police* [2013] NZHC 2672.

<sup>3</sup> *Chadderton v R* [2014] NZCA 528.

<sup>4</sup> *Chadderton v New Zealand Police* [2013] NZHC 3433.

provided for, in rather awkward terms, by s 107(4) of the Land Transport Act 1998.<sup>5</sup> The suspension granted expired when the Court of Appeal dismissed the applicant's appeal.

[2] Having applied for leave to appeal against the Court of Appeal decision, the applicant seeks a further order suspending the operation of the disqualification order; this time, pending determination of his leave application. Such an order is not provided for by s 107 (as it does not authorise suspension of the operation of a disqualification order when a judgment of the Court of Appeal is challenged in the Supreme Court). Counsel for the applicant suggest that the order sought can be made under s 144B of the Summary Proceedings Act 1957. This provides:

**144B Powers of Court of Appeal and Supreme Court on appeal**

On an appeal under section 144 or section 144A to the Court of Appeal or the Supreme Court,—

- (a) the court appealed to has the same power to adjudicate on the proceeding that the High Court had; and
- (b) the same judgment must be entered in the High Court, and the same execution and other consequences and proceedings follow, as if the decision of the court appealed to had been given in the High Court.

The suggestion is that by reason of this section and my entitlement under s 20 of the Supreme Court Act 2003 to exercise the powers of a High Court Judge, I should “extend Justice Keane’s order deferring disqualification to include determination of this leave application”.

[3] I do not see s 144B of the Summary Proceedings Act as relevant to the present situation but rather as applying to the adjudicative function of this Court should leave to appeal be granted. I have not been referred to any specific provision

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<sup>5</sup> I say “awkward” because the subsection is expressed to be applicable where an application is made “to the Court of Appeal for leave to appeal against a sentence of a District Court or the High Court that is or includes an order of disqualification ...”. Here leave was granted by the High Court Judge and there was thus no need to apply to the Court of Appeal for leave. As well, the appeal was not against sentence but rather against conviction. The subsection does, however, also address the position which obtains once leave to appeal is granted. Although on a strict syntactical approach, this appears to contemplate a grant of leave by the Court of Appeal, I would construe it as also applying where leave to appeal has been granted by the High Court. As well, for the purposes of the subsection, I regard an appeal against conviction as necessarily encompassing a challenge to the resulting sentence. So I am of the view that there was jurisdiction for the order made by Keane J.

providing for suspension of the operation of disqualification orders after the determination by the Court of Appeal of any appeal. And for reasons which are generally consistent with those given by Tipping J in *Bascik v Ministry of Transport*,<sup>6</sup> I am satisfied that I do not have jurisdiction to do so.

Solicitors:  
Crown Law Office, Wellington for Respondents

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<sup>6</sup> *Bascik v Ministry of Transport (No 2)* HC Christchurch AP159/90, 31 October 1990.