

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF WITNESSES UNDER 17 YEARS OF AGE PROHIBITED BY S 139A OF THE CRIMINAL JUSTICE ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 136/2013  
[2014] NZSC 39**

BETWEEN                      STANLEY WILLARD HAMON  
   Applicant  
  
AND                              THE QUEEN  
   Respondent

Court:                      Elias CJ, McGrath and Glazebrook JJ  
  
Counsel:                      J P Temm for the Applicant  
   M D Downs for the Respondent  
  
Judgment:                      16 April 2014

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

**Introduction**

[1] Mr Hamon and his partner were found guilty of the violent abuse of the partner's children, SK and TM. It was alleged on appeal that there had been a recantation by SK of his evidence at trial.

[2] The Court of Appeal was satisfied that any recantation was untrue. The appeal was dismissed accordingly.<sup>1</sup> Mr Hamon seeks leave to appeal against that decision.

### **Background**

[3] There was a report before the Court of Appeal from a psychiatrist, Dr Fraser, who had examined SK. In the interview SK said that “some details of his testimony” at trial were false. He said that he had been led to believe that his life would be better for him if he were no longer in his parents’ care but that had not been the case. SK thought he would be better off living with his mother again.

[4] When addressing SK’s developmental history, Dr Fraser recorded SK as giving the following details about aspects of his evidence that were incorrect. He said that Mr Hamon would:

give me a kick up the a\*\*e and gave me a hiding ... but I said things in court that was a lie, I said he put a chainsaw to [TM’s] head but he didn’t, I said he put a gun to [TM’s] head but he didn’t. He did threaten and he lit the chainsaw up but I didn’t believe that he would do it.<sup>2</sup>

[5] SK told Dr Fraser that the physical “hidings” that he received as a child were helpful. He said that “I learnt from it – I didn’t lie again, steal or give my sisters a hiding, I learnt not to hit girls”. SK believed that the physical discipline that he received had been useful because “if I didn’t get those beatings I’d be a girl, a pussy”.

[6] Dr Fraser’s report also set out her opinion of SK’s mental state. In her summary, Dr Fraser said that:

[SK] presents as a victim of long standing physical abuse, utilising primarily the defence of denial to cope with these difficulties. ... It is difficult to clearly conceptualise the reasons for [SK’s] recent retraction of allegations against his step-father and mother. There appears to be some element of secondary gain for [SK], with [SK] expressing disappointment at promises

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<sup>1</sup> *Hamon v R* [2013] NZCA 540 (French, Winkelmann and Panckhurst JJ).

<sup>2</sup> The particular evidence referred by SK did not form the basis of the charges. Further, as far as we can tell from the notes of evidence and the transcript of the video interview, evidence about those particular incidents does not seem to have been given in court, contrary to SK’s recollection.

that life would be better if he were out of his parents care and this not having in fact proven true. ... There has been both significant material loss for [SK] as a result of removal from his mother's care, as well as frequent changes in caregivers. [SK] also reports a perceived element of coercion in his disclosures, wishing to please his social worker at the time. The truthfulness or otherwise, of his current allegations is unclear.

### **Grounds of appeal**

[7] Mr Hamon's articulated grounds of appeal are:

- (a) the Court of Appeal should have called for oral evidence on the appeal;
- (b) the Court of Appeal erred in concluding that SK's statement was not a recantation;
- (c) the Court of Appeal erred in taking into account SK's alleged motive for the recantation; and
- (d) the Court of Appeal failed to give due weight to the centrality of SK's evidence.

[8] It is suggested, on behalf of Mr Hamon, that the proposed appeal will also provide an opportunity for this Court to consider the principles in relation to a complainant's recantation.<sup>3</sup> However, Mr Hamon does not in fact invite the Court to reconsider the applicable principles. All of the matters Mr Hamon seeks to put before this Court relate to the particular facts of this case. There is, therefore, no point of general principle involved. The only issue is whether there is a risk of a miscarriage of justice in the circumstances of this case.

### **Should there have been viva voce evidence?**

[9] Mr Hamon's first submission is that the Court of Appeal erred in not requiring SK and Dr Fraser to be cross-examined as witnesses in that Court.

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<sup>3</sup> The Court of Appeal applied the principles in *R v Baker* CA 37/03, 5 August 2003 at [32] – [35]; *Hamon v R*, above n 1, at [62] – [63].

[10] As the Crown points out, SK was not in fact a witness on the appeal. He did not complete either an affidavit or a statement for the appeal. Rather (and with Mr Hamon's consent) the appeal was heard on the basis of the written record, which included all of the alleged recantation material.

[11] Whether a person gives oral evidence before an appellate court will depend on the circumstances, including whether any party asks for that to occur. Mr Hamon did not seek to call SK or have him called. He also does not put before this Court any material that would have added to the material before the Court of Appeal, had SK or Dr Fraser been called as witnesses.

[12] There is therefore nothing that has been put forward that would suggest any risk of a miscarriage of justice on this point.

**Were SK's statements a recantation?**

[13] The Court of Appeal had said that it was satisfied that the recantation "to the extent it is properly characterised as a recantation" is untrue. Mr Hamon criticises the Court of Appeal's view of SK's statements. He submits that, if properly and objectively considered, the statements to Dr Fraser amount to recantation.

[14] SK only ever said to Dr Fraser that some aspects of his evidence were incorrect. It is also significant that SK, even in his recantation, said there had been violence in the family.<sup>4</sup> Therefore there is no error in the Court of Appeal's characterisation of the statements as not amounting to total recantation.

**Should the alleged motive for the recantation have been taken into account?**

[15] Mr Hamon's next submission is that the Court of Appeal erred in taking account of the "prospect of gain" from the recantation, at least without taking into account the "prospect of gain" from giving false testimony.

[16] Courts, when deciding on the truth or effect of any recantation, must be able to take possible reasons for any recantation into account. There is nothing to suggest

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<sup>4</sup> *Hamon v R*, above n 1, at [64] and at [5] above.

any improper reliance by the Court of Appeal on the “prospect of gain” in this case. Nor was the Court of Appeal unaware of possible motives for SK to lie at trial (and these had been fully explored at trial in any event). This ground does not lead to a concern about a risk of miscarriage.

### **Centrality to prosecution case**

[17] Finally, it is submitted that the more central to the prosecution’s case the evidence is, the more careful the analysis of recantation must be.

[18] The exercise the Court of Appeal conducted was to assess whether the recantation was untrue. The centrality of the evidence to the case is not logically relevant to this question. In any event, the Court of Appeal in this case undertook a careful analysis of the material before it and was well aware of the importance of SK’s evidence at trial.<sup>5</sup>

### **Result**

[19] The application for leave to appeal is dismissed.

Solicitors:  
R V Brown, Rotorua for the Applicant  
Crown Law Office, Wellington for the Respondent

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<sup>5</sup> At [63](c).